

IDENTIFICATION SECURITY: REEVALUATING THE REAL ID ACT

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

OF THE

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IDENTIFICATION SECURITY: REEVALUATING THE REAL ID ACT

WEDNESDAY, JULY 15, 2009

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENT AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, Tester, Burris, Bennet, Collins, and Voinovich.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning and welcome to this hearing where we will review the steps that the U.S. Government has taken and State governments have responded to and those steps that we may ultimately take to achieve the important national goal of keeping fraudulent State identification cards and drivers' licenses out of the hands of terrorists and criminals.

I want to welcome Secretary Napolitano, Governor Douglas of Vermont, and our witnesses on the second panel, and to thank you for all the work that you have done on this very important matter.

I always kick myself when I say I told you so, but I regret to say that I am not surprised we are here today. When Congress adopted the so-called REAL ID Act of 2005 as an amendment to a supplemental appropriations bill without hearings of any kind or any formal public vetting, we replaced a process for developing Federal identification requirements that Senator Collins and I had made part of the Intelligence Reform and Terrorism Prevention Act of 2004, the so-called 9/11 Commission legislation.

In our work, Senator Collins and I took very seriously the finding of the 9/11 Commission that "All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars and other necessary activities."

And the 9/11 Commission went on to appeal to the Federal Government to "set standards for the issuance of birth certificates and sources of identification on such as drivers' licenses."

With that in mind, we therefore included in the 9/11 legislation of 2004 a requirement that the Federal Government establish a negotiated rulemaking committee composed of subject matter experts

and stakeholders including, of course, representatives of the State governments to propose workable identification security standards.

Then came the REAL ID Act of 2005, which, as I said, was submitted as an amendment to supplemental appropriations legislation. Though I thought some of the parts of the Act and the intention of the Act were good, I opposed the REAL ID Act because I thought ultimately it laid out a very prescriptive, unworkable, and expensive process. And, unfortunately, history has borne this out, and that is why we are here today, if I may rub it in a little bit.

I really believe that if our original 9/11 Commission legislation had been left intact and a rulemaking process had begun negotiations with the States and the Federal Government, and it had not been repealed by REAL ID, we would have millions more secure IDs instead of being involved in a continuing debate and, really, a joust between the States and the Federal Government.

Some States, including Connecticut, are working to implement REAL ID, but the fact is that the legislatures of 13 States have passed laws prohibiting their States from complying with REAL ID as it presently stands, and several other States are right now considering some other legislation, and that is at the risk that their State identification documents will not be accepted by the Federal Government, for instance, for boarding a plane.

So that is the dilemma and the crisis really that brings us here today as we try to answer the question of what kinds of changes to REAL ID are necessary to achieve a workable solution here.

As always in the Congress, we cannot let the perfect be the enemy of the good, but, of course, we want to ensure that what we consider to be good is not diluted so that we in any way compromise our homeland security. I, personally, think we can achieve both goals.

Today, we are going to discuss bipartisan legislation sponsored by a number of Members of this Committee—Senators Akaka, Voinovich, Carper, Tester, and Burr— which is called the PASS ID Act that reforms REAL ID in an attempt to make it work as intended while trying to ease the strain on our overburdened and underfunded State governments.

The plan retains parts of REAL ID such as the requirement of a digital photograph, signature, and machine-readable coding on State-issued ID cards. States will also need to verify an applicant's Social Security number and legal status by checking Federal immigration and Social Security databases.

But the States would be given more flexibility in issuing the new identification cards while staying, I am pleased to say, within the REAL ID time table. In fact, if the Providing for Additional Security in States' Identification (PASS ID) Act becomes law this year, States must be fully compliant with it before the current REAL ID deadline of 2017, and that is important, I am sure, to all of us because any acceptable solution must really work within existing timetables and not delay increased personal identification security.

PASS ID does eliminate a requirement that motor vehicle departments electronically check the validity of some identity documents such as birth certificates with the originating agency. I know this change has been a major source of concern, and this morning I

want to discuss it with our witnesses and see if those concerns are justified.

PASS ID also strengthens privacy protections by requiring procedures be put in place to prevent the unauthorized access or sharing of information, to require a public notice of privacy policy and a process for individuals to correct their records.

So let me thank Senators Akaka, Voinovich, and others who join them, as well as Secretary Napolitano, for the efforts that you have made to come up with a plan that can work while not losing sight of the very direct statement of the 9/11 Commission warning us that "For terrorists, travel documents are as important as weapons."

I still do have some concerns about PASS ID that I want to explore with our witnesses today, but, bottom line, in an age of terrorism, reliable personal identification is an important and urgent matter critical to our homeland security. I hope that this hearing will enable us to move forward and mark up legislation in this Committee on this matter in the very near future.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank, Mr. Chairman.

One week from today, we mark the 5th Anniversary of the release of the bipartisan 9/11 Commission Report. In examining how terrorists were able to attack our country the Commission found that all but one of the 19 terrorists used drivers' licenses to board the planes that were then used as weapons in the attacks that killed nearly 3,000 people.

The commissioners recognized that easily-obtained drivers' licenses were a security vulnerability. As the Chairman has said, the words that I, too, remember are the Commission's words saying that "For terrorists, travel documents are as important as weapons." And to address this vulnerability, the Commission recommended that the Federal Government set standards for the issuance of birth certificates and other sources of identification, particularly drivers' licenses which had proven to be so vital to the hijackers' ability to carry out their deadly plot.

To call the effort to implement this recommendation "difficult" would be an understatement. As Senator Lieberman has recounted, he and I authored very well thought-out provisions in the Intelligence Reform Act of 2004 that established a collaborative committee comprised of Federal and State officials, technology experts and privacy advocates to develop these secure identification standards, and the work of this Committee was well underway in 2005 when, regrettably, the House of Representatives repealed our provisions by slipping the REAL ID Act into an urgent war-funding bill.

I use the word, slipping it into the urgent war-funding bill advisedly because in the Senate there were no hearings, there was no debate, there was no vote. This was a take it or leave it vote on the entire war supplemental.

Then, for more than 2 years, States were left to contemplate the enormity of the task of reissuing new licenses to all drivers by May 2008, while they waited for the Department of Homeland Security (DHS) to issue the regulations that would tell them how to achieve

that requirement. And the States waited and waited and waited until January 29, 2008, when a final rule was issued, leaving the States just 103 days until the May 11, 2008, compliance deadline.

Complicating the problem, State budgets had little room for the hundreds of millions of dollars that it would cost to implement the new regulations, and, of course, a faltering economy only worsened the financial strain.

Another problem was that the key information technology systems necessary to implement the law efficiently were not readily available.

And, although identity theft costs the economy billions of dollars and causes much distress to its victims, the Department's regulations failed to address critical privacy issues created by the interconnected systems of databases mandated by the law.

With these problems unresolved and numerous States protesting REAL ID or even outright refusing to implement the law, I worked to persuade the Department to provide States with an additional 18 months to meet the REAL ID deadline, giving us all time to revisit the issues.

The PASS ID Act that we are discussing today is one attempt to resolve these problems. It refines rather than repeals the law, and it targets areas where the law imposed unreasonable and costly burdens, failed to protect the privacy interests of our citizens and mandated technological solutions that may not be practical.

One example of these refinements is in the bill's approach to ensuring that each person possess only one valid license, from any one State, at any one time. To meet this goal, REAL ID would have mandated an information sharing system that may not be technically feasible or governed by basic privacy protections. Instead of scrapping the system altogether, PASS ID would preserve and fund a pilot program to test the necessary technology and to permit a careful examination of privacy concerns. This makes a great deal of sense.

Nonetheless, I recognize the concerns of those who fear that this bill, in addressing the problems of REAL ID, may have unintended consequences. Drivers' licenses can be the keys to the kingdom for terrorists bent on death and destruction. States have a responsibility to ensure that licenses are tamper-proof and issued only to people whose identity and legal status can be verified.

Certain language in the PASS ID Act may undermine that goal because it would not allow the Transportation Security Administration (TSA) to prevent a passenger from boarding a plane based solely on the fact that he or she did not have a compliant license. This provision would eliminate an important incentive for States to adopt Federal standards and could impose worrisome restrictions on the discretion of security officials who believe a passenger without a compliant license should not be permitted to board a plane.

As we examine this legislation today, my primary concerns are whether these provisions are moving us toward the security goal set by the 9/11 Commission 5 years ago while accommodating the legitimate concerns of States and privacy experts.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Collins.

It seems appropriate to move slightly away from normal Committee procedures and to invite Senator Akaka and Senator Voinovich to make an opening statement, if they would like, based on the extensive work that they have done in preparing and introducing PASS ID.

Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing to further explore the ramifications REAL ID on States, on security, and on privacy as well as the proposal that I, along with Senators Voinovich, Carper, Tester, Burris and other Members, have put forward to fix REAL ID.

At this point, Mr. Chairman, may I add happy birthday to our friend here, Senator Voinovich.

Chairman LIEBERMAN. Happy birthday.

Senator COLLINS. Happy birthday.

Senator AKAKA. I have been a longtime opponent of REAL ID due to concerns about protecting individuals' privacy as well as the States' inability to implement the burdensome program. REAL ID calls on the States to collect and electronically store individuals' personal records when issuing licenses and to share that information with every department of motor vehicles (DMV) nationwide. This effectively would create a national database containing massive amounts of personal information.

During the last Congress, I chaired two hearings on REAL ID where it became clear that it was simply not workable. Some of the data systems do not yet exist because so many States have balked at the high costs and privacy implications of creating such a system. If REAL ID is implemented, these databases could provide one-stop shopping for identity thieves and become the backbone for a national identification card.

We must act to fix REAL ID. States simply still cannot afford the \$4 billion it would take to implement REAL ID. Over a dozen States have already refused to comply, and several more, like Hawaii, have expressed serious concerns with the program. Without the participation of all States, there will be only a patchwork system for identification security, which means no real security at all.

The bill I am proposing, S. 1261,¹ the Providing for Additional Security in States' Identification Act of 2009, or PASS ID Act, represents a pragmatic approach to resolving many of the most troubling aspects of the REAL ID Act. I worked closely with the stakeholders, many of whom are here today, representing a broad range of views, to develop this practical alternative to REAL ID.

The PASS ID Act does exactly what the 9/11 Commission recommended: It sets strong security standards for the issuance of identification cards and drivers' licenses.

What it does not do is go far beyond that recommendation by requiring the collection of Americans' personal information and storing it in a centralized repository accessible by any State DMV.

Perhaps the most important change in our bill is the removal of the mandate that States share all of their drivers' license data with

¹The bill (S. 1261) referenced by Senator Akaka appears in the Appendix on page 55.

each of the other States. This provision created a clear threat to the privacy of all Americans' personal information, posed a great risk for identity theft and fraud, and raised the specter of a national database of all Americans' personal information.

The bill requires States to protect electronic information and, for the first time, any machine readable data stored on identification cards and drivers' licenses themselves, ensuring it is only used for its intended purposes.

Another change I want to highlight is the clarification of Americans' right to travel on commercial aircraft and to enter Federal buildings. The current law restricts these rights by requiring a REAL ID-compliant ID to board commercial aircraft and to enter Federal buildings.

In this country, we cherish the right to travel and the right to petition the government. Americans should not be denied boarding an aircraft or denied entry to most Federal buildings solely because they have lost or do not have their identification. Instead, such situations should be resolved through additional security screening or other inquiries as needed, as is currently TSA policy and is the case with every other type of security risk.

As important as what would change with PASS ID is what would not change: Individuals would still need to prove that they are lawfully present in the United States; individuals would only be allowed one compliant identification to be used for official purposes; and individuals would need to present the same sources of identifying documents to obtain a compliant license.

This compromise bill does not address all of my concerns with REAL ID. I know that others are disappointed that it does not address all of their concerns. However, the reality we face right now is that in less than a year States will be required to comply with a law that is overly burdensome and unworkable. We cannot let the perfect be the enemy of the good, especially when we are working to address a seriously flawed law already on the books.

To date, the Department of Homeland Security, the National Governors Association, National Conference of State Legislatures, the Center for Democracy and Technology, and several law enforcement organizations have endorsed PASS ID. I hope we will move swiftly to ensure its enactment and provide some clarity to States facing REAL ID implementation deadlines.

As always, my goal remains to protect both the security needs and the privacy rights of all Americans, and I will continue to work closely with the Department of Homeland Security to ensure that individual rights and liberties are fully protected during the implementation of PASS ID.

I thank you again, Chairman Lieberman and Ranking Member Collins, for agreeing to hold this hearing.

I ask that my full statement from the introduction of PASS ID be included in this hearing's record.¹

Chairman LIEBERMAN. Thanks, Senator Akaka. Without objection, so ordered.

Happy birthday, Senator Voinovich. I do not know your age, but I am prepared to say that you look younger than you are.

¹The statement referenced by Senator Akaka appears in the Appendix on page 52.

Senator VOINOVICH. I will hire you for public relations. [Laughter.]

Chairman LIEBERMAN. I bet I am right, but you do not have to disclose anything here.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. I have a problem because I have to do an amendment in a committee, and I have just been told I have to get up there for it. So I will make this really brief.

First of all, Senator Akaka, thank you very much for all the work that you have put in on this bill. We have some great co-sponsors of this legislation. You have spoken eloquently to this, but what everyone ought to understand is that REAL ID, 5 years later after enactment has not been implemented. It is not implemented.

Why did it not get implemented? It is because Congress did not sit down with the people that were impacted by the legislation and get their thoughts on how we could go about making these requirements possible.

And I will never forget when we had the hearing last year and Senator Akaka said we have to stop, throw it all out, begin again, get everybody involved, and do it right. And that is exactly what we have done.

Madam Secretary, thank you very much, and the National Governors Association too. You have come together, figured out how we can get this done and set Federal requirements working together. We have a symbiotic relationship. We want to secure America. But the way we do that is by working together, and that is exactly what this legislation, I think, accomplishes.

Now there may be some things yet that need to be added to it. But it is a good lesson for this Committee and for Congress. It is that when you go out and you do not dot the I's, cross the T's, and spend the time with the people that are really involved with an issue, what happens is it does not work.

And then what happens? You have to start all over again. So why not do it right the first time?

So we are going to do it right the second time. Thank you.

Chairman LIEBERMAN. Hear, hear. Thank you.

Thanks, Secretary Napolitano and Governor Douglas for being here, for your patience while we did the opening statements. Now I am happy to call on our Secretary of Homeland Security, Janet Napolitano.

STATEMENT OF HON. JANET A. NAPOLITANO,¹ SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Secretary NAPOLITANO. Thank you, Mr. Chairman, Senator Collins, Members of the Committee, for the opportunity to testify on PASS ID. I have a longer statement that I ask be included in the record.

Chairman LIEBERMAN. Without objection.

Secretary NAPOLITANO. PASS ID is a bill that I support. The Department of Homeland Security (DHS) worked with governors and other stakeholders to provide technical assistance in its drafting,

¹ The prepared statement of Secretary Napolitano appears in the Appendix on page 82.

and so the approach that PASS ID takes to fix REAL ID is one that I support, and I think it makes sense.

This is an important piece of national security legislation that is designed to help fulfill the 9/11 Commission's recommendation that the Federal Government set security standards for drivers' licenses. As has already been commented upon, the first attempt to do this, the REAL ID Act, was a start that badly needs to be fixed. PASS ID is a fix for REAL ID.

The States agree that REAL ID is too rigid and needlessly expensive in mandating how States meet their security goals. As you noted, Chairman Lieberman, 13 States—I think Missouri being the most recent last night—have actually enacted legislation barring themselves from implementing REAL ID, and 13 other States have passed resolutions opposing REAL ID. We cannot have national standards for drivers' licenses when the States themselves refuse to participate.

Now the practical problem with REAL ID is one of timeliness, and that sets the urgency for PASS ID because under REAL ID, as of December 31 of this year, States are required to attest that they are implementing REAL ID for their drivers' licenses so that they can be accepted for things like boarding a plane. By December 31 of this year, no State will have issued a REAL ID-compliant identification document. No State will have a REAL ID-compliant document.

Chairman LIEBERMAN. So, if I may interrupt you, that means that assuming nothing else happens in between, that it is under the law the drivers' licenses issued by the States would not be accepted by TSA to gain passage onto airplanes?

Secretary NAPOLITANO. That is correct, Mr. Chairman, not without additional screening by TSA, and one can only contemplate just the inconvenience in airline travel that could occur if everyone has to undergo additional screening because they do not have a REAL ID-compliant drivers' license.

Chairman LIEBERMAN. In other words, the kind of secondary screening that goes on now, if for some reason you forget your license or something of that kind, that would have to happen to everybody?

Secretary NAPOLITANO. That is right, Senator.

Chairman LIEBERMAN. Interesting.

Secretary NAPOLITANO. So that sets the urgency for REAL ID and why I am so appreciative of PASS ID, why I am so appreciative that the Committee scheduled this hearing today and is moving forward.

I am very pleased to be sitting next to Jim Douglas, my good friend, the Republican Governor of Vermont. He is the incoming Chair of the National Governors Association.

Later, you will hear from Sheriff Leroy Baca of Los Angeles on why law enforcement supports PASS ID.

Now we get to the fundamental reason why we have these laws in the first place. We go back to the 9/11 Commission Report. We need secure identification to thwart potential terrorists. Law enforcement needs to have confidence that an ID holder is who he or she claims to be. As the 9/11 Commission Report said, to terrorists, travel documents are just as important as weapons.

States vary widely in the standards they employ. Now the system is too open to fraud. National standards are necessary, but national standards are embodied both in REAL ID and in PASS ID. Secure identification certainly will not thwart every planned terrorist attack, but it can present an obstacle and given another counterterrorism tool to law enforcement that we need.

Now, as has been mentioned, there are many similarities between REAL ID and PASS ID. The main similarities between the two are the requirements for physical security of drivers' license production. The premises must be secure. A background check on employees must be conducted. There must be fraudulent document training given to all employees involved in the process.

A requirement to show PASS ID: At the end of the implementation period, noncompliant identifications would no longer be automatically accepted to board planes, enter nuclear plants, government buildings, and the like.

Document validation: Both laws would require States to validate the legitimacy of the underlying source documents such as birth certificates or licenses from other States. Further, under PASS ID, the requirement for electronic verification of Social Security numbers and lawful status remains.

Now the differences: Why is this easier to implement from the State perspective?

First, PASS ID eliminates the blanket requirement to use untested technologies for electronic verification of any and all source documents. States still have to validate documents, but they can pursue different ways to reach that standard.

Second, they are required to electronically verify the Social Security and lawful presence through the Social Security Online Verification (SSOLV) and Systematic Alien Verification for Entitlements (SAVE) databases. But unlike REAL ID, under PASS ID, they are exempted from paying the fee for doing those checks.

Third, there is greater flexibility under PASS ID in terms of how you re-enroll existing drivers' license holders because under REAL ID you have to re-enroll everybody under the age of 50, 3 years earlier than everybody else. Under PASS ID, we give the States flexibility on how to do the re-enrollment so long as everything is complete by 2016, which actually is one year earlier than the final completion date for REAL ID.

And, last, in terms of differences, as has been noted by Senator Akaka, unlike REAL ID, PASS ID actually contains within it specific assurance that States and privacy advocates have sought for the protection of the information that is garnered in the process.

So these differences which are designed to make the goal of REAL ID a reachable goal and designed to move us toward reaching the goal of the 9/11 Commission Report, these differences contained within PASS ID make it a bill that, if passed and implemented before the December 31 deadline of this year, will fix a bill that was flawed from the outset.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Madam Secretary. That was very helpful testimony.

Governor Douglas, we are honored to have you. You are here obviously not only in your capacity as the Governor of Vermont but

as the incoming Chairman of the National Governors Association (NGA) which has endorsed PASS ID. Good morning.

STATEMENT OF HON. JIM DOUGLAS,¹ GOVERNOR, STATE OF VERMONT; VICE CHAIR, NATIONAL GOVERNORS ASSOCIATION

Governor DOUGLAS. Well, thank you, Mr. Chairman, very much for your time today. It is great to be here, and I want to thank you for scheduling the hearing and for choosing the appropriate title, which is Reevaluating the REAL ID Act, because that is certainly what we need to do. We need to reevaluate it because it is not working. We have to come up with some solutions that will help us accomplish its goals.

For the past several years, at our NGA meetings, as the Secretary knows well, we have been talking about this, and all of the conversations seem to end the same way, with a great deal of frustration. Governors are frustrated because every governor is a security governor.

Every governor wants his or her State to issue licenses that are accurate and secure. Every governor wants government to work. Every governor is vividly aware of what happened on September 11, 2001, and wants to do what he or she can to make sure that it does not happen again.

As you noted, Mr. Chairman, in your opening comments and Senator Collins did as well, the two of you crafted a negotiated rule-making process as part of the Intelligence Reform Act that was designed to bring all the parties to the table to craft meaningful national standards for drivers' licenses. Ironically, if that agreement had been left in place, we probably would not be having this discussion today. But, instead, the negotiated rulemaking was replaced, as you have noted, by REAL ID.

As of yesterday, 13 States have enacted laws prohibiting its implementation, and a number of others have adopted joint resolutions opposing the law. Well, it seems to me that security systems only work if people are willing to use them. REAL ID does not work because a lot of States have just said no.

So I am committed to providing Vermonters with a driver's license that is accurate and secure, and I know my colleagues are in their State as well. But, while the objectives of REAL ID are laudable, the law represents an unworkable and unfunded mandate that fails to make us more secure. I really believe we need a better mousetrap.

PASS ID provides a solution and a path forward, and I want to thank Senator Akaka and Senator Voinovich and their colleagues for introducing it.

PASS ID builds on the strengths of REAL ID. It solves its weaknesses and delivers more cost-effective common-sense solutions that can enhance the security and integrity of all licenses and State identification cards.

PASS ID is consistent with the 9/11 Commission recommendation that has been cited. It increased security. It facilitates participation by all jurisdictions. And it addresses one of the largest con-

¹The prepared statement of Governor Douglas appears in the Appendix on page 91.

cerns with REAL ID: how to allow States with anti-REAL ID laws to come into compliance with a workable national standard.

The PASS ID Act was written as the original act should have been, with States, the Homeland Security Department, and other interested groups at the table. That is why NGA supports this proposal. That is why I am happy to join my former colleague, herself a former Chair of NGA, Secretary Napolitano, and offer my endorsement of the bill.

We fully understand the need to ensure the integrity of security and security of the process by which we issue drivers' licenses and ID cards in my State. We are working toward compliance with the law. I want to assure the Committee that we are one of the states that is not resisting. We are doing everything we can to comply, but, as enacted, REAL ID poses significant challenges for implementation.

Now PASS ID will also present some real challenges, some changes at least in the way we issue licenses, but its elimination of unnecessary requirements and its cost-effectiveness make it a much better alternative.

There are significant challenges in developing the electronic systems that REAL ID requires as some of you have noted and, frankly, a great deal of doubt about whether they are going to be ready on time, whether they will be reliable, and whether they will be nationally deployed so that we can begin issuing fully compliant licenses by the deadline.

In contrast, our State's processes for validating documents like birth certificates and ensuring only one license per driver are rigorous and reliable. In Vermont, we feel we can achieve the same level of security called for in REAL ID and do it sooner under PASS ID.

It is most cost-effective—the key consideration, especially in these difficult fiscal times. The present cost estimate for States to implement REAL ID nationally is \$3.9 billion. In Vermont, we estimate it will cost us at least \$20 million, which is a lot for a State our size and a real roadblock to its implementation.

Vermont has not completed a detailed cost analysis of PASS ID, but it is clear that it eliminates unnecessary costs and authorizes some of the funding necessary for States to implement the program, and that is an important first step toward covering the cost of compliance.

PASS ID eliminates unnecessary costs like the transaction charges for linking to and using the Federal system. It authorizes some of the funding necessary to implement the program. These are big steps toward covering those costs. In fact, the NGA, with the assistance of State stakeholders, estimates that PASS ID would cost States about \$2 billion, approximately half of REAL ID.

In addition, PASS ID strengthens privacy protections. It requires privacy and security protections for the personal identification that is collected and stored in databases for the program. It requires States to establish safeguards against unauthorized access and use of such information as well as to create a process for cardholders to access and correct their own information if they find an error.

One aspect of PASS ID that we particularly appreciate is the bill's explicit recognition of the Enhanced Driver's Licenses. Since

we are so close to the Canadian province of Quebec, we very much value the importance of having an open but secure border.

I have my Enhanced Driver's License, Mr. Chairman, and I have already used it in returning to Vermont from across the Canadian border. It is convenient. It is faster, and I appreciate the work of the Homeland Security Department in facilitating our approval of this document.

Just do not look at the weight, Secretary Napolitano. I am not under oath on that. [Laughter.]

Vermont businesses retain jobs and grow because of opportunities to sell products and services to our neighbors to the north. The United States and Canada enjoy the largest bilateral trading relationship in the world with more than \$1.3 billion in goods and services crossing the border every day.

Thousands of people in my State cross the border with Quebec every day. Our border station at Derby Line is one of the busiest on the Canadian border for commercial truck traffic. In today's economic climate, a free and open border for Vermont manufacturers and retail businesses is more crucial than ever.

The importance of our Enhanced Driver's License (EDL) being recognized as compliant with Federal driver's license standards cannot be understated. Our economic, environmental, and cultural relationship with Quebec is of paramount importance. The EDL costs us about a million dollars to implement, but, more importantly, the ease of border travel that it allows is key to our economy and our relationship with Canada, our largest trading partner.

Now since the passage of REAL ID, governors have consistently offered constructive suggestions for implementing it. We have encouraged DHS and Congress to fix the Act by implementing statutory or regulatory changes to make it feasible and cost-effective. We have called on the Federal Government to fund it by providing support to offset our State expenditures for meeting Federal standards.

I really believe that PASS ID represents the kind of common-sense solution that governors have long sought. PASS ID represents, in contrast with REAL ID, a workable, cost-effective solution that can increase the security and integrity of all license and identification systems.

I want to highlight the critical deadline that is facing us at the end of this year. By December 31, all States must meet 18 specific requirements to be deemed materially compliant with REAL ID. With a quarter of States legally prohibited from meeting these requirements and almost every State, if not literally every State, as the Secretary noted, unlikely to achieve compliance by year-end, we really need to address these challenges if we are going to continue to have the kind of access to our borders and to our transportation infrastructure that we all seek. So I urge your support for passage of this legislation.

I want to thank you for the opportunity to appear on behalf of the Nation's governors, and I look forward to continuing to work with the Committee to address any issues that may remain.

Chairman LIEBERMAN. Thanks very much, Governor Douglas.

We will start with a 7-minute round of questions for the Senators.

While we are on that subject of Enhanced Driver's License, for those who do not live in States that have them, how do you use them? Just give us a quick report on how you get across the border and back?

Governor DOUGLAS. As you pull up to the border, roll down the window, and there is a screen that is very close to the driver's side of the vehicle, similar to ordering something at a fast food restaurant.

Chairman LIEBERMAN. Yes.

Governor DOUGLAS. And you hold the card right up to the screen, and then the information goes to the border agent in the border station so that he or she has that readily available without having to take it off the document manually which is what happens now.

There have been some concerns about the security of these documents, and we provide little security envelopes that make sure that they cannot be read if people are concerned about it. But it is that easy.

Chairman LIEBERMAN. And it is quick?

Governor DOUGLAS. Absolutely.

Chairman LIEBERMAN. Thanks.

I mentioned in my opening statement that I was grateful for the work that has been done by the two of you and a lot of others including Senators Akaka, Voinovich, and their co-sponsors here, but that I had some continuing concerns, and I want to ask you a question or two about those.

I worry that the identity verification procedures may have been weakened—I know I have heard that from some critics of the PASS ID—and that we will wind up where none of us want to be, which is back where we were before September 11, 2001, when State authorities could accept an identity document without checking the validity. In other words, the license itself would be valid, but the identity documents on which it was based were not. And, as we know, a number of the September 11, 2001, terrorists used falsified source documents to get valid State IDs that allowed them to travel in and out of the United States.

So the question is if PASS ID becomes law, will the next group of terrorists planning an attack on the United States be able to evade our laws in that same way, Secretary?

Secretary NAPOLITANO. Mr. Chairman, let me respond at several levels. One is because the States by and large are not implementing REAL ID you cannot assume that it sets a higher security standard for breeder documents than PASS ID because REAL ID, in a way, is dead on arrival. I mean it is just not being done, as Governor Douglas said, by so many States.

I do want to clarify a statement I made earlier in our colloquy, which is to say it is absolutely true that no State by December 31 will have a REAL ID-compliant document.

Chairman LIEBERMAN. Right.

Secretary NAPOLITANO. The only exception will be if a State comes to me and certifies that they are ready or willing to comply with REAL ID and are making material progress to comply.

Chairman LIEBERMAN. Such as Vermont?

Secretary NAPOLITANO. Perhaps.

Chairman LIEBERMAN. Maybe. You retain discretion. [Laughter.]

Secretary NAPOLITANO. Nonetheless, they still would not have a REAL ID-compliant document. They would just be able to get an extension.

Chairman LIEBERMAN. Yes.

Secretary NAPOLITANO. You have 12 States covering 40 million people plus now Missouri, which is another 6 million, that are actually barred from even seeking such an extension. So it gives you a sense of the problem.

Chairman LIEBERMAN. Right.

Secretary NAPOLITANO. Going back to your question, States are still required to validate the breeder document. There are a variety of ways that States can do that, and we can give you greater detail on that, but they still must validate the underlying documents.

Chairman LIEBERMAN. Under PASS ID, if PASS ID should pass.

Secretary NAPOLITANO. Under PASS ID, yes, Mr. Chairman.

Second, they are required to electronically verify the Social Security number and lawful status with the Federal databases we have for those.

Chairman LIEBERMAN. Excuse me for interrupting. That would be with the Social Security Administration and with Immigration?

Secretary NAPOLITANO. Immigration, correct. So that is added. The difference is that we do not charge the States a fee for requiring that they do that verification.

The third thing is, and this is a difference from the pre-September 11, 2001, world, your drivers' license can only be issued for a time period that is consistent with your immigration status.

In other words, let's say you have a visa that will permit you to be in the United States for 4 years. A normal drivers' license period is 7 years. Your drivers' license can only be issued for the period that your lawful status is established. That difference would have picked up some of the September 11, 2001, hijackers.

Chairman LIEBERMAN. OK. That is helpful.

Let me ask you the second part of this, and then I will ask Governor Douglas to get into this. There is also concern about eliminating the provision in REAL ID that mandates information-sharing among States and transfers it through the PASS ID legislation to a voluntary pilot program.

As you know, the September 11, 2001, hijackers held multiple drivers' licenses and IDs from multiple States. Of course, it is not just terrorists but drug runners, counterfeiters, other criminals, even bad drivers with multiple offenses, like DUIs, can exploit this lack of information-sharing between States. In other words, they have a license in one or more States—that may be a problem—and they exploit the failure to share information between the States to help them hide from law enforcement.

So tell us about why this change was made and why not compel information-sharing among the States just to avoid this loophole?

Governor, do you want to start?

Governor DOUGLAS. Well, I think, as some of you said in your opening statements, there is a great deal of concern about the protection of personal privacy as we consider these issues and a lot of concern in the REAL ID legislation about this national sharing database among all of the States. And so, with so many States declining to comply and with concerns about the flow of information

around the country, the proposal under PASS ID to have a pilot program, I think, makes some sense.

Chairman LIEBERMAN. Is the privacy concern just expressed explicitly that the more people who have access to more data, the more possibility there is of violations of privacy rights?

Governor DOUGLAS. I think that is exactly right.

There are a lot of concerns that come up in various contexts, as you certainly know, with respect to privacy. I did not believe, for example, that there was really a need for a privacy sleeve on our Enhanced Driver's License, but to satisfy the concerns of those who wonder if somehow information can be electronically captured, we make them available. And I think there are some concerns that may not be well founded but are there. So what we are trying to find is that right middle ground between access to information that is necessary and respecting the rights of privacy of the American people.

Chairman LIEBERMAN. This is a classic example in this post-September 11, 2001, world of our responsibility to weigh those privacy concerns against what I would assume was the advantage to our national security from mandating information-sharing among the States about whether the individual coming in for a drivers' license has had a license in another State that has been compromised.

I presume there is also a cost concern here or is there not, Secretary?

Secretary NAPOLITANO. Mr. Chairman, yes, there is a significant cost concern. This is where the concept that there would actually be some big centralized hub that would have to be created that somehow the States would have to pay arose, and the issues with privacy and the ease of infiltration of a hub if there is one place where all the information is gathered.

The technical feasibility of some of these systems also needs to be explored. From what you watch on television, you would assume that all these things can happen with a snap of a finger, but in fact technically some of these things are very difficult.

That is why under PASS ID, we continue with what I call the Mississippi Pilot Project, which has several States participating, because as we move forward there may indeed be cost-effective solutions to some of those issues that have been raised by the States. But, as we stand right now, we really do not have the capacity to say that we are going to have in one place easy electronic verification of every type of license and document.

Chairman LIEBERMAN. I thank you. My time is up.

I would like to work with you and my colleagues on the Committee to see if there is some way we can strengthen this section of the PASS ID without going over the tipping point where we continue to encourage the States not to comply because we obviously need them to comply.

Senator COLLINS.

Senator COLLINS. Thank you, Mr. Chairman. Governor, all of us are concerned about the looming deadline under the current law and the ability of States to comply with the law.

Under the previous Administration and, indeed, in the current regulations, there is a material compliance standard that the Department of Homeland Security uses to assess whether or not a

State is complying with REAL ID. I remember very distinctly Secretary Chertoff telling me that Vermont was an example of a State that is in material compliance with REAL ID, and he pointed to your Enhanced Driver's License as an example of a compliant drivers' license. He also cited Washington State, New York, and Michigan as being in material compliance.

So, therefore, I am very surprised to hear Secretary Napolitano assert this morning that no State is in compliance with REAL ID. So I first want to ask you, Governor, do you consider Vermont to be in material compliance with REAL ID?

Governor DOUGLAS. I do at this point, but on December 31, there are 18 benchmarks that States have to meet, and even a State like mine that is doing its best to comply is not going to be able to meet all of these 18 benchmarks on that date because of the requirement for the national databases that are not yet up and running. So, now we are, but we are going to find it virtually impossible to meet all these 18 benchmarks by the end of the year. So that is why the urgency that the Secretary noted is critical.

Senator COLLINS. Which is an excellent point, and it is the reason that we have gathered here today, but I do not want to leave the impression that there has been no progress in this area, that States are completely unable to make improvements in their security when virtually every State has taken steps, including my State of Maine, to make sure that we are giving licenses only to people who are lawfully in this country.

My State was one that did not have that requirement. We had, for example, some people who were here illegally, coming to Maine, renting a post office box and being able to get a drivers' license, and that obviously is fraught with problems.

Secretary Napolitano, I want to ask you about a provision in PASS ID that you and I have discussed that I find troubling, and that is the provision that says that an individual cannot be prohibited from boarding an airplane solely because of the lack of a compliant drivers' license. A strong incentive for States to comply with the law has been the fact that they want to avoid problems for their residents in boarding airplanes, yet this bill would appear to undermine that incentive by including specific language that prohibits Federal security officials at airports from denying a passenger access to a plane solely on that basis.

Now I want to make clear that the Transportation Security Administration (TSA) has always had the discretion to exercise judgment if an individual shows up at the airport without sufficient identification. They do that every day now. But that is very different from putting specific language in the law that tells States that they are not going to be inconveniencing their residents as much, at least if they do not have a compliant ID, and I find that troubling.

Do you support that provision?

Secretary NAPOLITANO. Senator, I think what would happen under that provision is basically the same as what would happen without that provision. In other words, TSA's operating procedure would be that if someone appeared without a REAL ID-compliant document they would be subjected to additional screening, so that it would not be an automatic you cannot board. It is just the same

as you described it, but they would have to be looked at or other things would have to be evaluated by the TSA employee to ascertain whether they should be allowed to board.

Senator COLLINS. Do you think that language should be in the bill?

Secretary NAPOLITANO. We would be happy to work with you on that language.

Senator COLLINS. Are you concerned that the provision could become the basis of lawsuits challenging the decisions of security officials under that standard?

Here is the issue. Let's say the individual does not have the compliant ID. There is a law that says that this cannot be the basis for keeping the individual off the airplane. Secondary screening is done. It finds nothing, but the security official still believes that individual should not board the plane.

I think you are creating a situation where that security official is going to feel he or she has no choice but to let the individual board the plane because you have now put that specific language in the bill, in the law.

Secretary NAPOLITANO. Senator, yes, I think there may be a point there that we can explore with you between now and markup of the bill, but I want to go back to the fact that with the language or without the language, the guidance from TSA is going to be if you appear without a REAL ID-compliant document some additional exploration is going to be needed to be done before you are allowed to board a plane.

Senator COLLINS. Mr. Chairman, I hope this is an issue at which we will look further. I support many of the provisions of PASS ID, and I commend all of those, including my own staff, who have worked so hard to come up with a system that is less expensive, less burdensome to the States, and more protective of privacy concerns. But I do want to make sure that we are not creating unintended consequences that get us back to the terrible situation that we had prior to September 11, 2001.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Collins. I share your concerns, and we will make sure they are reflected in our markup. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Secretary Napolitano, as you well know through your previous role as the Governor of Arizona, in 2007, DHS issued all States an extension for complying to the REAL ID Act. As you testified, DHS also announced that it would grant States another extension but only if they proved they meet 18 REAL ID benchmarks by December 31, 2009, and this was raised by the Governor.

Many States, home to millions of people, may not meet this deadline. What will DHS do if Congress does not act this year? Would you expect to begin enforcing your travel and facilities restrictions next year or to issue another extension for compliance?

Secretary NAPOLITANO. Senator Akaka, you have just described the paradigm of being between a rock in a hard place because we will be faced with either not enforcing a law that Congress has passed so that millions of Americans are not prevented from traveling, entering courthouses, or the like, or at least highly inconven-

ience before they can do that, versus enforcing it and causing all of those effects.

In my view, that is why we need PASS ID but more than that. If all I do is basically enact another universal extension, we are not getting to where we need to be because the whole goal here is to begin reaching the goal of the 9/11 Commission, which is to have a secure form of ID. So, if the law on the books is one that for all the reasons described earlier just has to be continually extended, we are not actually getting to a system that reaches the security goal that we are striving for.

So, with a better law, we will be better able to enforce and get to the standard that we want to reach.

Senator AKAKA. Thank you. I know it is difficult, but thank you for your response.

Governor Douglas, as you know, one of the biggest problems for States implementing the REAL ID Act has been inadequate funding. States simply cannot afford to foot the bill for a \$4 billion unfunded mandate in this economic climate. DHS has issued grants to States to offset some of these costs and has allowed States to use part of their State Homeland Security Grant Program funds which are required for other pressing security needs.

Mr. Baker's written testimony for the next panel states that the Federal Government should insist that States give highest priority to drivers' license security rather than State-level homeland security priorities.

Would you like to address from your experience, as a governor, the financial burdens REAL ID, in its current form, imposes on States and whether States are properly prioritizing their Homeland Security Grant funds?

Governor DOUGLAS. Well, I feel good about the prioritization in Vermont. You may want to ask other States to respond to that.

There obviously is a great deal of accountability when we receive those Homeland Security resources. We believe we have deployed them responsibly. We are audited by the Federal Government. So I think we have done a good job.

You have identified one of the key concerns, Senator, that all States have, especially in this challenging fiscal climate. We are facing tremendous pressure to balance our budgets to meet the legitimate needs of the people we serve, and I am sure you have heard stories from around the country about dramatic service curtailments that States are now facing because of this fiscal and economic crisis. So to impose an additional responsibility through REAL ID obviously means that something has to give in terms of State finances.

For most of the last century, when drivers' licenses were first issued, it has been exclusively a State responsibility, a State discretion. States have decided how to do it. But now the Federal Government has imposed some requirements. And I do not object to them, but I think it is fair that it not be an unfunded mandate.

So I really do appreciate the resources that have been proposed, the more cost-effective approach that your bill recommends. We believe about half as costly as what it is in the REAL ID law, and I think especially in this climate that is a critically important feature.

Senator AKAKA. Thank you very much for your response.

Secretary NAPOLITANO, the PASS ID Act requires that DHS issue regulations to implement it within 9 months after the bill is enacted. Some have expressed concern that DHS could not meet the deadline, although substantial portions of the REAL ID regulations could be used to craft PASS ID regulations.

Do you believe that DHS will be able to meet this deadline?

Secretary NAPOLITANO. Senator, yes. It will be tight, and it will be tough, but we believe that we can. As you yourself noted, we are not starting from scratch here because really PASS ID is a REAL ID fix, so that we have good building blocks from which to work. So, yes, we believe 9 months can be met.

And, indeed, even if there were to be some slippage, we still could get regulations out prior to the effective date of what REAL ID would have provided because the PASS ID time line would actually end with full implementation 1 year before REAL ID would have.

Senator AKAKA. Thank you very much for your response.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Akaka, very much.

Senator Voinovich, welcome back.

Senator VOINOVICH. I apologize if any of these questions have been asked already, but, Governor Douglas, it has been said that PASS ID allows States to rubberstamp applicant source documents like birth certificates and Social Security numbers. I want to point out that PASS ID does in fact require confirmation of Social Security numbers using the Social Security Online Verification database.

But can you speak to any concerns you have with the other REAL ID verification requirements such as the requirement that birth certificates be verified using the Electronic Verification Events database?

Governor DOUGLAS. Well, as you noted, Senator, some of the requirements in PASS ID are the same as they are in REAL ID in terms of verification of those source documents. So that should give all of us a sense of belief that those verifications will be as strong as they were under the current law.

The problem is these national databases, such as vital records or the passport verification database or the drivers' license information-sharing one that was referred to earlier, are not available. They are not up and running, and so I think to have a requirement as we do in the REAL ID law that is not there does not give anyone a sense of security.

So I think PASS ID is equally strong in these areas of document verification, and the pilot project that the Secretary mentioned in terms of drivers' license verification will give us a sense of whether that can be done on a more universal basis.

Senator VOINOVICH. Madam Secretary, can you speak to the status of efforts to develop the systems, the databases that we need to verify passports and birth certificates?

Secretary NAPOLITANO. I can, although those questions are more appropriately I think probably for Departments of State and Health and Human Services (HHS) which has, of course, the birth certificate registry.

But it is known as the Electronic Verification of Vital Events (EVVE). I believe that something like 13 States now are participating in EVVE, which is the birth certificate database, but the remainder are not. I do not know the schedule for or the ability of the full implementation of birth certificate validation at HHS beyond what EVVE provides.

Senator VOINOVICH. I would hope that maybe somebody in your shop would kind of keep track of where they are in regard to that because that certainly helps to achieve the goal that we have, and that is the best drivers' license that we can possibly have from a security point of view.

And, Governor, as these databases come onboard, I am sure that you and other governors are going to take advantage of them.

Governor DOUGLAS. I am sure we will, Senator. I was talking with the folks in our vital records office yesterday before coming here, and it is quite a process to get all of those data entered in a form that can be accessed in a consistent way. Some of our vital records prior to 1950 are in different media from those between 1950 and 1980 and then there have been different systems since then. So we are working at it.

I indicated earlier that we are doing everything we can to comply with REAL ID, and it is so onerous, frankly, that we are not going to meet the benchmarks that have been established. So we will certainly take advantage of what is available when it is.

Senator VOINOVICH. Thank you.

Chairman LIEBERMAN. Thanks very much, Senator Voinovich—a good exchange.

Senator Burris, welcome.

OPENING STATEMENT OF SENATOR BURRIS

Senator BURRIS. Thank you, Mr. Chairman.

I am just trying to figure out where to start on this issue for our distinguished panel.

I am holding up here an Illinois drivers' license and an Illinois ID card. Illinois issues an ID card if you go in and request it in addition to your drivers' license, which I use to go through the airport securities.

I am just wondering if a person does not drive. What we did was issue this card for ID purposes, and even PASS ID and even REAL ID I understand that we are seeking to do it based on a drivers' license. Is that correct?

Secretary NAPOLITANO. Senator, under both bills, when they use the word, drivers' licenses, they also include within that any identification issued by a motor vehicle division in lieu of a drivers' license for nondrivers.

Senator BURRIS. OK, because what I am hearing is if a person does not drive or if a person is 14 or 15 years old they will not have a drivers' license, but they should have some ID to get on the vehicle. So the PASS ID would also encompass some identification from the State.

Rather than a State ID, why cannot we have a national ID where this burden would not be placed on the States? The States do not have the burden of trying to process this cost.

Have you ever been to O'Hare Airport? I just left Midway Airport.

And I am hearing, Madam Secretary, that you say that if they do not have the REAL ID after December, O'Hare Airport will probably shut down. If you do what you are talking about doing, where there is extra screening, you will probably have to be at the airport not 2 hours earlier but 3 or 4 hours earlier. And so, I just see the biggest mess coming in a city like Chicago that would just hamper even air travel.

So I am just wondering, is there something that we are talking about where the verification can be done where there would be a national ID rather than a State ID?

Secretary NAPOLITANO. Well, Senator, I do not know about the possibility of a national ID. There is obviously a lot of pros and cons on that approach.

Senator BURRIS. I am sure there would be.

Secretary NAPOLITANO. We are not taking that kind of a bite nor are we seeking that right now. What we are seeking is a fix to REAL ID so that come December 31, 2009, I, as the Secretary of the Department of Homeland Security, do not have to make the choice between enforcing the law that Congress has passed and creating what could be, at the minimum, a lot of confusion at our Nation's airports.

Senator BURRIS. Madam Secretary, we are hoping that we can have PASS ID.

And I do not know, Mr. Chairman, whether or not we can get PASS ID which is a lot better than REAL ID, but we might even want to take it to another step further because I look at what TSA is doing now and to put that burden on a TSA worker, what they go through now at the airport. It is unconscionable, listening to all of the screening in process, which is pretty acceptable to the traveling public.

But I still see, for example, I left home the other day and did not have my ID with me. Even as a U.S. Senator, there was a process that I had to go through to get on an airplane, and everybody knew me in Chicago. I am no stranger.

And I just wonder what would have happened to old John Doe out there who showed up to the airport, had to get to work, had to get to this meeting, with no ID. I am sure there is a process, and they took me through a process.

I had to verify addresses. I had to show two or three places where I lived, and they knew me. So the TSA staff is doing their job, Madam Secretary. I want you to know that. And they put me through every rigor, and I did not complain either because I do not want anybody else getting on that plane that has not been properly identified. OK? So that is not the argument here.

But I am just wondering, what burden are we going to put on that poor TSA screener, that is looking for a raise by the way, and may have to make that judgment, even with the REAL ID or the PASS ID? Are we taking those into consideration?

Secretary NAPOLITANO. Senator, I would say yes, and I would say with PASS ID which will indicate that a license or identification card is compliant that we start now to make more straightforward

and simplify for the public the identification necessary while helping us meet our security goals.

I always retreat to the 9/11 Commission Report. I think my job as the Secretary of Homeland Security is to take those recommendations and to move us toward implementation which will give us greater safety and security in our country.

And, as we move forward, we reach some of these pragmatic, practical problems. It is not a surprise that the first stab at identification like this REAL ID needs to be fixed and the pragmatic problems addressed. But for a worker at an airport, say a TSA worker, making more straightforward what kind of ID is acceptable, the indicators for that kind of ID and the like should help us overall reach our 9/11 Commission goals.

Senator BURRIS. Well, Madam Secretary, I know that I just had a couple grandchildren born, and they got issued Social Security numbers. So Roland II and Ian are in the database here in the Federal Government somewhere. I am just wondering, have we looked at and should we not look at a national database that would give the identification of the Americans and the individuals in this country?

Has anyone done any studies in reference to that or it was just actually in the REAL ID legislation to put it on the States? I am sorry I was not here at the time, and probably you were not here either, I would assume.

Secretary NAPOLITANO. I was a governor.

Senator BURRIS. And I think I was enjoying life. [Laughter.]

But I just wondered, do you have any knowledge as to how that or you do not know?

Secretary NAPOLITANO. I do not.

Senator BURRIS. Governor, did your State look at that at all in terms of the past actions?

Governor DOUGLAS. We have not considered a national approach other than the approach that we are discussing this morning which is PASS ID.

I think the urgency of getting something done before the end of this calendar year is such that we ought to all work together, find some consensus as this process has done without getting into an area that might be more difficult.

Senator BURRIS. I am thinking about the long run, Governor, down the line because I just see this PASS ID even itself is not going to be as secure as we think it is because the documentation in the databases are the same databases you use for REAL ID. The question is just how secure is that going to be?

I think we ought to look at, if we get this in place, certainly so we can get a little bit more security with our travel or the identification, but I hope and pray that we will look at even taking it to a higher level without the invasion of privacy. We still have the privacy issue here that we must deal with.

And the transfer—I mean I do not see how you are going to deal with Illinois, Ohio, and Michigan. When I go to Ohio and I am traveling out of Ohio, it is a different issue in how they issue there.

I am looking at the start on this. Is this what they are planning, this process here where they have the REAL ID process? Is this what would be the new PASS ID document?

Secretary NAPOLITANO. It would be something like that to indicate that something is compliant—very simple, very easy for somebody to observe and note, like a TSA worker.

Senator BURRIS. Which would mean that, too, could be counterfeited as well as any of the other documents. So I do not know whether that is going to be really the solution with this type of a special identification because after you get the documentation the person can produce false documents or be in the database with false documents and still get a star on his drivers' license.

Secretary NAPOLITANO. Senator, I think we would be more than happy to brief you and your staff on other protections that are built in the documents to inhibit forgery, false ID, and the other things that are built now into drivers' licenses that make them more difficult to manufacture in a fraudulent way.

Senator BURRIS. I appreciate that.

Secretary NAPOLITANO. It is never 100 percent, but it is much more difficult than years past.

Senator BURRIS. Thanks so much.

I am sorry about my time, Mr. Chairman. Thank you.

Chairman LIEBERMAN. No. Thank you, Senator Burris. We are glad you are not enjoying life as much as you used to because you contribute to the work of our Committee. I thank you.

I think we better move on to the second panel. I thank you, Madam Secretary and Governor Douglas. It has been a very helpful exchange.

We understand the urgency of this matter, and the next markup of this Committee is actually 2 weeks from today. So I want to challenge each of us to work together urgently because my goal, and I know Senator Collins' would be, is to get this PASS ID before that markup on July 29.

Thank you both very much.

We will now call the second panel: Stewart Baker, Sheriff Leroy Baca, David Quam, and Ari Schwartz.

Thank you, gentlemen, for your patience. We appreciate very much that you are here. Some come a long way, as Sheriff Baca has. We welcome you back again. It is great to see you.

We will begin with Stewart Baker, former Assistant Secretary for Policy at the Department of Homeland Security. Secretary Baker has occupied a role, which is new because this is a new department. But in the Armed Services Committee, we are quite regularly hearing from former executives of the Department of Defense who really have the experience and continue the interest and, based on that experience, really have a lot to offer.

So I think you are doing this as well or better than any of this first generation of executives, now former executives, of the Department of Homeland Security. Whether one agrees with you or disagrees with you on a particular matter, I really thank you for your continuing interest in our homeland security, and I welcome your testimony.

**STATEMENT OF HON. STEWART A. BAKER,¹ FORMER
ASSISTANT SECRETARY OF HOMELAND SECURITY**

Mr. BAKER. Thank you, Senator. I feel very strongly about making DHS a success and anything I can do in my current capacity to contribute to that I am delighted to do.

Mr. Chairman, Ranking Member Collins, and Members of the Committee, it is a pleasure to be here.

I have raised four concerns in my prepared testimony. I am going to talk principally about one of them today, and that is the source document problem.

I think it is easiest to understand that if you have heard the story, as I heard from his relatives, of Kevin Wehner. Kevin Wehner was a carpenter. He had three kids. He took a vacation in the Virgin Islands around 2002 or so, and in the course of that his wallet was stolen. About 2 years later, he started hearing that he was wanted for speeding tickets, for other abuses of a license in Florida.

It turned out that someone had walked into the Florida Department of Motor Vehicles, presented his Social Security card and a birth certificate, almost certainly just made up, from the Virgin Islands in his name. On the strength of that, Florida gave this imposter a drivers' license in Kevin Wehner's name.

Kevin Wehner tried to cure that problem long distance from New York, was unable to do that, finally moved to Florida, and in the course of living in Florida asked for a drivers' license. And the State said, "no, you cannot have a drivers' license. You already have one." He said, "no, that is not me."

They asked for more paperwork. He provided the paperwork.

A year later, Kevin Wehner was still wanted by the police for numerous speeding tickets and unregistered vehicle violations. He was at risk every time he drove his car of being pulled over and sent to jail because of the bad birth certificate that had been accepted by the Florida Department of Motor Vehicles.

That is quite aggravating and dangerous, but it was only the beginning of the nightmare for him. Because on September 13, 2007, the guy that the police knew as Kevin Wehner was stopped, pulled over. He got out and pulled out a semiautomatic weapon that he had bought in Kevin Wehner's name, and he shot down four police officers, killed one of them, and fled.

The police immediately put out an all points bulletin for him, for Kevin Wehner. They went to the Florida Department of Motor Vehicles and said, do you have a photograph for this guy?

And they said, yes, actually, we just got a photograph from a guy who said he was Kevin Wehner.

They took the real Kevin Wehner's photo, spread it all over the States, put it in an all points bulletin to the police. So, now, if he is stopped while driving, he does not risk just going to jail.

You can imagine what the reaction of the police force of Jacksonville would be if they pulled over somebody that they believe was a wanted killer of police officers, he is driving Kevin Wehner's car,

¹The prepared statement of Mr. Baker with attachments appears in the Appendix on page 98.

he looks like Kevin Wehner, they ask him, are you Kevin Wehner, and he says, yes, I have my license right here.

I do not think that his chances of surviving that encounter are very high. In fact, when they finally did straighten this out, the police went looking for the guy who they really wanted, and he was killed in a gun battle with the police that evening.

The risk to Kevin Wehner from that bad birth certificate is astonishing. What is difficult to credit is that Florida is still accepting birth certificates without doing anything to check the validity of those birth certificates. That is something that REAL ID would have fixed. It is something that PASS ID allows to continue permanently.

PASS ID deserves some credit. PASS ID has worked hard to make sure that the documents are not easily forged, and I think we should acknowledge the value of that.

But, given a choice between having a license that is hard to forge and birth certificates and other source documents that are hard to forge, we really should be choosing to make the birth certificates more checkable than the drivers' licenses because drivers' licenses, if you are stopped by the police, they are going to check a database to see if that drivers' license was really issued to you in that name with that identity. And so, a fake drivers' license will not get you past a traffic stop, whereas if you bring in a birth certificate there is simply no check at all.

What we should be working toward is having exactly the same capability with respect to birth certificates that we have with respect to drivers' licenses today. It ought to be possible to say to the issuing authority, did you issue this birth certificate? That is one of the requirements of REAL ID that is lost here that ought to be fixed.

Just very briefly, the other three items that I talked about in my testimony:

The 9 months to get a regulation out, I do not believe that is possible. It would take 10 months even if the Department of Homeland Security could do its job instantaneously, which it cannot. I appreciate the confidence that the Secretary has, but I do not believe that she can do it. And, at a minimum, this Committee should try to make sure that there is a form of insurance that if that deadline is missed the provisions of REAL ID that are really equivalent to PASS ID remain in effect. There ought to be a way to fix that problem.

The other two issues, very quickly: I agree entirely with Senator Collins. We are creating a litigation magnet by creating a statutory right to fly without ID. There is no need to do that, given the current policy.

And making the expenditure of State Homeland Security Grant Program funds for drivers' licenses something that is a priority is something that is particularly valuable. State Homeland Security funds come from all taxpayers. They should be used for things that benefit all taxpayers and make all taxpayers more secure. Drivers' license security does that. That should be the highest priority for the use of State Homeland Security grants, and I urge that you enact a priority for that use of the funds.

Thank you.

Chairman LIEBERMAN. Thanks, Mr. Baker. That was a compelling story about the birth certificate.

Am I correct, just briefly, that what you are saying is that we ought to be investing money, perhaps Federal money, in setting up this national database system? In other words, the so-called EVVE system is just beginning to come together, and the States are obviously not willing to contribute.

Mr. BAKER. I agree that we should spend our money on that. I do not think it is a central database. Each State is going to put together its own database on its own residents.

Chairman LIEBERMAN. Yes.

Mr. BAKER. But it ought to be possible for a State to inquire whether that birth certificate was really issued. That is all that is really necessary, not a centralized database. The cost of that, just setting up the connectivity is a few million dollars, and then it is probably a couple of million dollars per State to clean up the databases, roughly. So our guess is that this could be done for a total of \$75 million spread over 2 or 3 years.

Chairman LIEBERMAN. That is very practical and helpful. Thank you. As you know, I am concerned about that omission in the PASS ID legislation.

Sheriff Baca, thanks for being here. Leroy Baca is the Sheriff of Los Angeles County, testifying today on behalf of the National Sheriffs Association which has endorsed PASS ID, also a member of the Major Cities Chiefs Association. Sheriff Baca leads the largest sheriff's department in the Nation which has over 18,000 officers and staff.

It is an honor for you to be here. I thank you for going to the trouble of coming across the country, and we welcome your testimony now.

STATEMENT OF HON. LEROY D. BACA,¹ SHERIFF, LOS ANGELES COUNTY, CALIFORNIA

Mr. BACA. Thank you. Good morning, Chairman Lieberman, Ranking Member Collins, Senator Akaka, Senator Voinovich, and Senator Burris. I am pleased to have this opportunity to appear to express the associations that were identified by Lieberman that I represent in support of S. 1261.

As the witnesses before me have addressed the problems and challenges associated with the implementation of REAL ID, my testimony will focus on the critical need for a national standard for identification security from a local law enforcement perspective, so that we can effectively integrate what we are doing here to ensure that the homeland security is, in fact, secure.

Hopefully, my testimony will strengthen the core message of Secretary Napolitano and Governor Douglas. Together, we recognize that the proposal to issue a national standard for identification security has been a contentious one. However, we believe that PASS ID adequately addresses the cost, policy, and privacy concerns so as to protect the citizens that we serve. Nothing will ever be perfect, however.

¹The prepared statement of Mr. Baca appears in the Appendix on page 113.

From a law enforcement perspective, it gives us that much more confidence that the identification we are looking at is authentic. That really is the core reality of the 9/11 Commission request and recommendation, that if someone is saying this is who I am and they provide an identification card or drivers' license, that in fact that is who they are. That is the ultimate goal.

It provides one more tool to ensure public safety. It is designed to make it much more difficult for terrorists, criminals, and illegal aliens to tamper with official identification.

And so, I would like to just close with two or three points here, and that is, as you have stated well, the 9/11 Commission was concerned that varying State standards created security gaps that were exploited by the September 11, 2001, terrorists in obtaining State identification documents. As such, the 9/11 Commission recommended a national standard, not national ID cards, and PASS ID provides a cost-effective, common-sense solution that balances critical security requirements with input and practical needs of individual States.

My second point is that PASS ID provides flexibility to the States for implementing the security requirements. It also provides flexibility for validating source identification documents and eliminates fees associated with the use of Federal databases.

The next point is that PASS ID requires the States to develop procedures to prevent the unauthorized access or sharing personally identifiable information. It mandates public notice of privacy policies and the establishment of a redress process for individuals who believe their personal information should be amended. It restricts the use of personal information contained in the drivers' license or an ID bar code to purposes in support of Federal, State, or local laws and prohibits States from including Social Security numbers in the bar code.

Finally, PASS ID removes the blanket requirement to electronically verify applicant documents and protects against the creation of a national identity database containing all drivers' license and ID information. I think that really is a key point.

Finally, only citizens and non-U.S. citizens who are lawfully present in the United States are eligible to receive a PASS ID.

And so, what we are talking about here is simply, in conclusion, that millions of contacts a day are made with people in the United States who are here legitimately, lawfully in every way possible are here to do the right thing as our citizens. An ID system such as a drivers' license or an identification card will come into the hands millions of times a day for a variety of reasons. The authenticity of these documents is what PASS ID will ensure.

Thank you very much.

Chairman LIEBERMAN. Thank you, Sheriff, very much—very helpful testimony.

David Quam is next, Director of Federal Relations at the National Governors Association. We thank you for working closely with our staff and with the staff of the Department of Homeland Security to put together the PASS ID, and we welcome your testimony now.

**STATEMENT OF DAVID QUAM,¹ DIRECTOR OF FEDERAL
RELATIONS, NATIONAL GOVERNORS ASSOCIATION**

Mr. QUAM. Thank you, Chairman Lieberman, Senator Collins, Senator Akaka, and Senator Voinovich. Happy birthday to you, sir.

Since my boss, Governor Douglas, or soon to be boss as Chair of NGA, has already spoken, and my former boss, Secretary Napolitano, also spoke so eloquently on this issue, I will be brief. I will reiterate some of the instructions that were given to NGA by governors.

Governor Douglas talked about governors coming together and talking through this issue. It is remarkable when governors come together without staff, person to person, because they are able to talk just as governors. They discuss how to make a State run and their unique position in having to actually make everything work.

REAL ID was a source of great frustration for governors and remains one. We now have 13 States who have said they are not going to participate. Governors are very concerned about making investments into their drivers' licenses to increase security and integrity, while also making investments that make sense. What were the rules going to be? Can we create certainty? And, what does the future look like?

REAL ID, unfortunately, with some of the baggage it created, has never created certainty. PASS ID is designed to try to create certainty and allow States to move forward.

When the governors got together, they said, let's try to find a fix and let's be guided by four things:

First and foremost, fulfill the 9/11 Commission recommendation. That is the starting point and is the commonality for everybody involved in this issue.

Second, facilitate and encourage participation by all jurisdictions. Allow the 13 States who have said no a way to come back in and participate because security standards only work if people are willing and able to use them. When you have one-fourth of the States not participating, it is hard to put verification systems together when, for instance, the entire Northwest is not participating. How are you going to verify that person's information if they are from Seattle and you are sitting in Atlanta trying to assess whether that person should get a drivers' license?

Third, enhance the security integrity of all licenses and ID cards while retaining State flexibility to innovate. I think you said REAL ID was too prescriptive. That was a big fear. States actually want to do more. They are happy to have the Federal Government set a floor of standards because they want to innovate beyond it. I think the experience States have had with the Enhanced Driver's License show the commitment of States and governors to actually take security standards and move beyond what is required because they share your interest in security and integrity.

The last guideline address critical privacy concerns and reduce unnecessary costs. Let me focus on privacy just for a minute because I think it is important to view some of the systems that PASS ID does not include in this context. Privacy was a key driver

¹The prepared statement of Mr. Quam with attachments appears in the Appendix on page 118.

in a lot of the States that ultimately have said no. Privacy was a concern because there were databases being set up that actually threatened personal identity and encouraged identity theft by providing databases that could ultimately be hacked. That was a concern, a political concern, in several States.

The privacy concern was followed by one of implementation, questions about whether this could actually be done. And then of course there was cost, that this was an unfunded mandate.

This was Washington, once again setting the rules and, as Senator Lamar Alexander loves to say, sending the bill to the States.

These issues combined to have 13 States and then 11 others pass resolutions saying: You know what? This was a bad idea. We are not going to comply.

What PASS ID does and is designed to do is to stop kicking the can down the road. Let's solve the problem. Let's create certainty. Let's do what we can now.

Verification is increased under PASS ID because all States will conduct verification through SAVE and SSOLV. It should be noted that right now I believe 49 States use SSOLV and 30 use SAVE. PASS ID would require everybody to come in. That is a level of verification that did not exist pre-September 11, 2001, does not exist now, but would exist after PASS ID.

The three systems that the Governor talked about that are questionable or that would not be required right away—the drivers' database, passports and even vital records—are very difficult to implement, but PASS ID does not say get rid of them. It says pilot them. Let's spend the time and money and make the investment to see if we can make these things work.

And, if we can make them, if we can get them funded and they are cost-effective, governors and DMVs will use them. But, as one governor said to me, he said, "David, can you tell me today how any of these systems are governed, who owns them, how they are paid for, or how you are protecting my citizens' identity?"

The answer for all of his questions was "no."

He said: "In that case, how can I sign up for this law and put my folks on the line? Until those questions are answered, I cannot move forward."

I think that is a good standard, and PASS ID represents a solution to this problem.

I will add that many of the advocates who have participated in this process, to a degree, are not completely satisfied. In Washington, that probably means we found the right solution.

Thank you, sir.

Chairman LIEBERMAN. Thank you.

The final witness is Ari Schwartz. We welcome you back to the Committee where you have testified to our benefit before.

Mr. Schwartz is the Vice President and Chief Operating Officer of the Center for Democracy and Technology.

**STATEMENT OF ARI SCHWARTZ,¹ VICE PRESIDENT AND CHIEF
OPERATING OFFICER, CENTER FOR DEMOCRACY AND TECH-
NOLOGY**

Mr. SCHWARTZ. Thank you very much, Mr. Chairman, Senator Collins, and Members of the Committee. Thank you for having this hearing and for inviting me to testify today.

I would particularly like to thank Senators Akaka and Voinovich for their leadership on PASS ID and moving this forward, and also our colleagues at the National Governors Association for trying to bring this back to a nonpartisan place where we can have this discussion.

I was actually on the Intelligence Reform Committee that worked on a negotiated rulemaking, and I think that Senator Collins has very eloquently laid out what that Committee's charge was in trying to come up with rules that protected privacy while still meeting the 9/11 Commission's goals of flexibility, of standards for issuance and for getting the information on the card.

That is really what the folks on the 9/11 Commission wanted, to make sure that we had this ability to improve the drivers' licensing system, to be able to use it, to be able to rely on it for purposes of national security but then also that we had privacy and we had the flexibility built in as we went forward. If you go back and read the 9/11 Commission Report, it is very clear that civil liberties issues in particular are of great concern to the Commission.

Unfortunately, REAL ID really pushed this discussion to the edges. We really had a discussion at the extremes where now we have one side that is committed to this kind of rigid standardized discussion that represents REAL ID, where privacy has been removed from the discussion. Remember, the Intelligence Reform Act specifically said that we needed to have privacy standards in place. Those were taken out in REAL ID, and DHS noted that in their notice of proposed rulemaking originally under REAL ID, that they could not put in the same kind of privacy standards that they would have been able to under the Intelligence Reform Bill, and that seemed to be Congress's intent. So we have taken a step back from that.

On the other side, you have groups and other public policy officials that would prefer to do nothing, that feel the problems could come from tinkering with the current situation might be worse than where we end up down the road.

We do not think that either of those possibilities are the right solution. The truth is probably somewhere in the middle and that we need to be moving down in the direction to get at that answer. We think PASS ID does that.

PASS ID addresses the issues with REAL ID by retaining the current federated system but protecting information in the machine-readable zone while keeping REAL ID's minimum standards for obtaining a license and the standardization of information on the card.

Importantly, PASS ID would require States and law to create privacy and security safeguards including internal fraud and physical security. We have seen time and time again that the greatest

¹ The prepared statement of Mr. Schwartz appears in the Appendix on page 127.

weakness of the drivers' license system actually is of internal fraud and of physical security within the DMVs. From California to Washington, DC, even in the past 2 years, we have seen cases of workers at DMVs selling real licenses for \$1,000 to \$2,000 to individuals that should not be able to get them under the current law.

We have also seen several cases where employees have sold the entire DMV database of information to identity thieves who are using it for identity theft.

Before we can rely more heavily on the drivers' license for authorized purposes, we should ensure that these problems are being addressed by the States has PASS ID would require in law.

We ask the Committee to ensure that these important privacy and security protections are not weakened as we move forward.

We also urge you to consider other changes in this direction: In particular, Congress repeal the mandate for standardized machine-readable zone, limit the data elements that may be contained in the machine-readable zone and limit access to the machine-readable zone to only what is necessary for legitimate law enforcement and administrative purposes.

Congress should reject the use of the vicinity read technologies that can be easily cloned and are not secure for human identification purposes.

And, finally, Congress should require States to minimize storage of copies of source documents to prevent fraud and theft of the source documents.

We look forward to working with the Committee as you move forward, and I look forward to your questions.

Chairman LIEBERMAN. Thanks very much, Mr. Schwartz. As always, you have been helpful.

I am going to ask just one question, and then unfortunately I have to leave to go to a meeting at noon. But I thank the witnesses very much. Senator Collins and Senator Akaka will go on in my absence.

Mr. Schwartz, I want to ask you because, as you heard in the first panel, I am concerned—and you referred to it—about the importance of the States validating source documents, the kind of documents that people use when they come in and apply for a drivers' license.

Secretary Napolitano and Governor Douglas basically gave two reasons why they were either opposed or skeptical. One was that with the privacy concerns, and the other was the cost for the States, particularly to input birth certificate information. Mr. Baker obviously spoke at some length with that anecdote about that.

I wanted to ask you whether your privacy concerns about that kind of system, about the mandating that States cooperate and provide data to one another about the source information, particularly birth certificates, whether you have great privacy concerns, whether they can be taken care of, how you feel about it.

Mr. SCHWARTZ. Yes. Thank you, Mr. Chairman.

We support the idea of the pilot and moving forward with the pilot exactly as Mr. Quam put forward.

The main reason of the concerns is that the quality of the information in these databases is just of a very poor quality. I know this

from my personal life. Actually, my wife's date of birth was wrong on my son's birth certificate, and when I went in to go to change it they appended it at the bottom of the form. They do not change the field itself. Every State, every locality has had differing standards for how they go about making these changes and what they do with this information for hundreds of years.

So, if you say we are all going to connect this information together, which I agree just connecting the information together is fine, I think that the cost of correcting the information, of getting it linked so that they are standardized—you are talking about standardized forms—it's incredibly expensive. And then the ability to put security protections on top of that is questionable as well.

So we know there are a lot of problems with the quality of the data. Then you have people going in, correcting it, saying, as you would, as identity thieves often do, pretending to be these people.

We know that there have been problems in the past when people have gone through and said, oh, I need to correct my record. And they go in, and they pretend to be someone else when correcting it. How do we deal with that kind of situation where we can correct this?

Now we may be able to do it. I do not think we are going to be able to do it in 6 months.

Chairman LIEBERMAN. Mr. Baker, would you give me a quick response to Mr. Schwartz's comments just now?

Mr. BAKER. Sure. He is correct that there will be problems at the margin with respect to errors in the database. But for 90 or 95 percent of the records you will get a quick check, and this means that you will eliminate entirely a massive amount of fraud today which consists of making up birth certificates that did not exist as in the Kevin Wehner case.

So we ought to solve the big problem first. The secondary problems can be addressed by simply picking up the phone when you have a problem and saying to the State, can you tell us whether this birth certificate is a good birth certificate?

This is what the Social Security Administration does today, and that allows you to take care of notations on the birth certificate and other things.

It does mean that you then have to find a way to make those adjustments to the database, but we would be so lucky to have that problem. Today, we have Kevin Wehner's problem.

Chairman LIEBERMAN. Thank you. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Sheriff, we have talked a lot today about the issue of terrorists using drivers' licenses, but more secure drivers' licenses also have applications for prohibiting or making it more difficult for counterfeiting to take place, and you address some of that in your written statement. Could you talk more about the benefits of more secure, authentic drivers' licenses to you as someone who is involved in law enforcement?

Mr. BACA. Yes. Thank you, Senator.

The key point of authenticity of identification tools, in this case, drivers' licenses or ID cards: Identity theft is a tremendously large problem, and right now a lot of people are vulnerable within databases out there in the internet world that are tapped into by people

who have the skills to access that information. The key then is that there has to be some point where there is a reliable identification source which would be the drivers' license under a PASS ID system or the ID card.

The volume of what people are fearful of in America is that their ID will be stolen from them as was given in the example by Mr. Baker. And so, we in local law enforcement, along with our Federal partners, are very wrapped up in a huge amount of identity theft with not enough resources to chase down all the offenders involved. This is an international problem as well as a national problem.

So part of the reason, I think, in the discussions with the major city chiefs along with the National Sheriffs' Association members on this issue is to see the value of this not purely from a prevention tool for terrorism but for a purpose of preventing all forms of crime where people's IDs are so easily acquired, even if they lose a drivers' license.

And everyone has their anecdote here. My drivers' license and one of my credit cards were taken, and within an hour they were trying to purchase some products from a department store. Fortunately, the clerk was alert and said, show me your drivers' license. Well, the person had my drivers' license, but they were not going to produce it because they did not quite look like me.

But you get the drift that this is a far more reaching solution to an ongoing problem before September 11, 2001, and September 11, 2001, accentuates the need now.

Senator COLLINS. Thank you. I think that is a very important point, and it is the point that Mr. Baker made as well that we should not overlook in this debate.

Mr. Schwartz, I appreciate the very constructive approach that you have taken to these negotiations. There is a provision of the bill that I would like to get your thoughts on, and it is the provision that criminalizes the act of scanning information contained on the drivers' license machine-readable zone and using that information to track the use of the card, to store information that is collected or resell it to a third party.

I certainly understand what this provision is trying to get at, and I support the desire to curb the unauthorized use of this private information.

Some business organizations, however, have expressed the concern that this language is over-board, and they point to an earlier version of the bill that would have allowed the use of the language to prevent illegal activity or fraud. They have given us an example of a business that uses that information to identify someone who is repeatedly returning merchandise at different locations in order to commit a fraud.

What is the concern about adding an exception if the information is used to prevent fraud, misrepresentation or other illegal activity? As I indicated, that was in one of the earlier versions.

Mr. SCHWARTZ. Yes. Well, first of all, thank you, Senator Collins. This is an extremely important provision for us and I think for privacy advocates and for a lot of citizens that feel that when they give their license to someone they want to understand what is happening to it behind the scenes.

The issue there with the fraud exception really is to look at how broad that fraud exception is. We have seen a lot of fraud exceptions that are created for one purpose and used for many purposes down the road, and I think there is a lot of concern over that issue.

In fact, it is my understanding that actually the Department of Justice had concerns over this fraud provision as well as groups like ours did, which tells you about the concern about how this may be used down the road. In fact, we have seen cases where bars say that they are swiping information to get the age of individuals but then use that same information to give to tobacco companies, to market information to tobacco companies about students at local colleges who come into the bar.

Senator COLLINS. That is indeed troubling.

Mr. SCHWARTZ. Yes.

Senator COLLINS. Very troubling.

Mr. SCHWARTZ. That happened in Oklahoma last year.

So we know for a fact that it is taken, and people think that it is being used for one purpose, but then it gets used for many other purposes. How do we stop that and where do we put that in?

We are OK with the swipe and saying: This is the same person. This is the same card that we saw over here when we looked at this person.

So if all they do is type in the information in the case of your example, type in basic information about the individual. Then when they come back and swipe the card somewhere else, it can populate itself at that point. So we are not talking about a major ban—swiping of the card is OK to check the authenticity of the card and that the information on the card is real. The question is really about using it to populate information that then can be used for many multiple other purposes.

Senator COLLINS. Thank you.

Actually, Senator Akaka, I am not sure which one of us is Chairman right now. So perhaps I should be saying, thank you, Mr. Chairman, instead of recognizing you for your questions.

Senator AKAKA [presiding]. Thank you very much, Madam Chairman.

Mr. Baker, as you may have heard in the first panel, I asked Governor Douglas about the States' use of grant funds. You expressed concern in your testimony about the prioritization of identification security and recommended that PASS ID include language ensuring that grants to improve drivers' licenses are a higher priority than other State projects.

Would you recommend that the Federal Government require States to comply with secure identification standards before they can use funds for priorities such as first responders or disaster preparedness?

Mr. BAKER. Let me start by saying I think we all recognize that one of the biggest concerns on the part of the States has been a sense that they are being asked to spend money that they do not have. There has never been a good cost estimate, but it is clearly not free to come into compliance with the improved security for drivers' licenses.

At the same time, of course, the Federal Government is sending hundreds of millions, nearly a billion dollars, to States specifically

to improve homeland security. It is both a Federal responsibility since we want them to improve their drivers' license security, and a State responsibility to use taxpayer money that comes from taxpayers all over the country, to use that many first for things that will benefit people all over the country.

Since a drivers' license and, as we saw, a birth certificate issued in the Virgin Islands is good in Florida, we need to have a national system and we need to encourage people to spend their Homeland Security funds first on things that will help improve the security of all Americans.

I do not think it is necessary to say you cannot spend money on anything until you have fixed everything about your drivers' license security, but I do think that it should be one of the top three priorities and States should have to spend some of their money improving drivers' license security until they are at the point where they say, we think we are there, and the Homeland Security Department agrees.

Senator AKAKA. Thank you.

Mr. Quam, I have a question relating to some of the electronic databases that are required by REAL ID and are slowly being implemented by a handful of States. In particular, I am interested in the Electronic Verification of Vital Events records.

As I understand it, some States are using the system to help electronically verify birth certificate information. However, only a few States currently have scanned birth records included in the system. Can you speak to the current status of this, of States' use of EVVE and whether it is feasible for DMVs to use EVVE on a widespread basis to verify birth certificates in the near term?

Mr. QUAM. Thank you for the question, Senator, and also thank you for your leadership on this issue and for the help of your staff who has been just tremendous in trying to pull together so many different interest groups to find a solution.

With regard to EVVE, I know that the National Association for Public Health Statistics and Information Systems (NAPHSIS), which is the organization that runs that particular system, has, I believe, submitted a statement.¹ About 15 States currently participate in EVVE. Only three DMVs currently use that system. We have 56 jurisdictions—only 3 currently use it.

NAPHSIS, the organization, according to their testimony, believes that about 85 percent of birth records dating back to 1935 are in electronic form. I would like to see verification of that number. Certainly, I have no reason not to believe that.

I do know that several States have had great difficulty in actually transferring especially old records into electronic form, and making them consistent, accurate, and usable. That is not an easy task to do at the end of the day.

For example, there is one State that just recently moved its licenses to a legal presence standard, which means people had to prove legal presence in the United States. That State had to set up a war room just for issues related to birth certificates because for all those people coming in, those who are in the United States legally who are, say, foreign-born or foreign residents had no prob-

¹ The statement referenced by Mr. Quam appears in the Appendix on page 164.

lem showing that they were legally present. The person who had the problem showing that they are a citizen of the United States happened to be the grandmother who is over 60 years old whose birth record was in the family Bible that was in the house that burned down. That person had a problem proving that they were in the United States lawfully. And so, the State spent more of its time with those citizens than it ever did with other people who could easily show their legal status.

Transferring birth certificates into electronic form and creating electronic databases is not an easy task. I think it has to be done slowly. It has to be done in a meaningful way.

Again, the questions I heard from governors were not about should we do it. A lot of them said: If it is there, that is great. Maybe we will use it. But we want to know about the governance. We want to know about the privacy protections and the accuracy.

Even for EVVE, they estimate that they will have about 90 or 95 percent accuracy. The way that translates into a line at the DMV is that one of every 10 people is going to get a false reading. That means delays. That means additional time, perhaps another trip to the DMV. You can be one of those citizens who has been in the same house, the same county, the same city all your life, but you are going to be rejected if this system does not work well and is not 100 percent reliable.

The pilot project is aspirational. Let's see if we can get it up and running. Let's see if we can solve those questions. It is somewhat of an "if you build it, we will come" situation.

I would add to that, if you build it right, I think the States will come along. But we need to do that on a cooperative basis. We do not need to rush it just to meet REAL ID standards.

Senator AKAKA. Thank you, Mr. Quam.

Mr. Baker, you testified that all birth certificates which generally are in paper form in county vital records offices throughout the country probably could be digitized and made searchable through EVVE for \$100 million or just \$2 million per State, not counting Washington, DC, and the territories, in addition to a total of \$4 million to get EVVE activated in all States. What is the basis of that estimate?

Mr. BAKER. That estimate is derived in part from the estimates that we received when I was in government based on the experience of the States that actually had to digitize their records and, as well, from NAPHSIS which administers the program or administers the database.

Senator AKAKA. Thank you for that.

Senator COLLINS, do you have further questions?

Senator COLLINS. Thank you, I do.

Mr. Quam, there are some States that have vigorously protested REAL ID and have passed legislation forbidding compliance with it. There are other States that have invested a great deal of money and effort and have taken steps towards compliance. Vermont is one of those States.

If PASS ID was to pass and we have new implementing regulations, is there concern that the investments made by States who are seeking to comply with the law would be for naught or do you

consider the PASS ID bill sufficiently similar to current law that those investments would still be put to good use?

Mr. QUAM. It is an excellent question, Senator, and I think it is the latter. PASS ID builds on the strengths of REAL ID and because so many of the 18 benchmarks that States have to meet at the end of this year are still part of PASS ID you are going to see security increased across the board. That also happens to be where most of the State investments have been made. Therefore, those investments are not lost. They are actually used. So you are going to keep the value for those who have invested.

It is interesting, that even in some of those States who have been such vocal opponents, some of those very same governors have gone on their own and said: You know what? I want to invest in a secure license. I hate REAL ID, but I am going to invest.

Their licenses and their systems are actually fairly close to meeting those 18 benchmarks. PASS ID gives them an opportunity—legislators, governors, all those who protested a law that they do not like—to reevaluate and to see if this makes more sense and their investments can actually have value down the road.

Senator COLLINS. That is an excellent point. I had noticed that as well when I have looked at individual States, the fact that some of the States that have protested the loudest are in fact close to compliance, or at least have reached material compliance with the law, but understandably they did not like Washington telling them how without consultation. They also, in some cases, were resentful of the financial burden.

Does every State currently have a requirement for legal presence?

Mr. QUAM. I will look to some of the other panelists. I believe we are almost there. When REAL ID first went into place, I think about 10 States did not have it.

Senator COLLINS. Correct.

Mr. QUAM. I think most of the States have moved. There may be one left who does not have that requirement, but everybody else now has legal presence as a requirement.

Senator COLLINS. Do any of the other panelists know the answer to that question? Mr. Baker.

Mr. BAKER. I am under the impression that New Mexico and perhaps Hawaii still have not gone to that.

Senator COLLINS. That is something that we will check with the Department for the record.

I know my State of Maine was one of the last. The governor recently vetoed a bill that would have repealed the requirement for showing of legal presence, and I salute the governor for doing so because I think that is a fundamental reform.

I am, however, sympathetic to the situation Mr. Quam described because we have had situations in Maine because of our close association with Canada where the great grandmother came over from Canada many years ago, decades ago, married an America, thought that made her a citizen and does not have proof of her being born just across the border in New Brunswick. So it can be a difficult issue.

I still think a requirement for legal presence is extremely important and that we should not be giving drivers' licenses to people

who are here illegally, but it does get more complex when one tries to comply with the law.

Let me ask one final question, and that is to Mr. Baker, and I want to go back to the commercial aircraft boarding issue because I am truly troubled by creating that loophole and how it would work in real-life application.

In addition to creating the possibility for endless litigation, my concern is that security officials are increasingly being trained in behavioral recognition techniques like those that the Israeli Government has used for airport security for decades and very successfully. So an individual may present himself at the airport without a compliant ID, go through secondary screening, and there are no obvious red flags. He is not on the terrorist watch list. He is not carrying anything that a wand picks up as contraband. Yet, through the training the security guard has in behavioral recognition techniques, the guard may believe that this individual poses a risk.

Under the provisions of the PASS ID legislation with the prohibition against denying the individual to the plane solely because he does not have a compliant ID, are you concerned that the guard would not have grounds to deny the individual access to the airplane, Mr. Baker?

Mr. BAKER. I am. As we know, there is a good chance that the Capitol Building is still standing precisely because the 20th hijacker was turned away in Orlando by a border official who said he just gave me a creepy feeling, and I was not going to let him in.

We really need to be able to let people use their judgment, their discretion. It is critical, as the Israelis say, that we look for terrorists, not just for weapons.

I predict that once we write this into law the courts will be asked to enforce it. People who don't bring IDs will say: I missed my flight. I was denied boarding because I was sitting there, cooling my heels and answering your questions. So I have been denied boarding, and I was cooling my heels because I did not have an ID.

By the same token, I think the courts will say: Well, OK, we have to make sure that this is not a pretext, that they are not just making up a creepy feeling to deny him boarding because he did not have ID. So we are going to have to do a searching inquiry into what the reasons are, and some reasons are good enough, and some reasons are not.

I think you cannot overestimate the impact that it has on a relatively low paid employee to have a Federal judge questioning his motives and telling him he did his job wrong. No one wants to go through that. And all of those things are going to be a real damper on doing the kinds of searching inquiry we want TSA to do.

Senator COLLINS. I want to make clear that I am not talking about irrational prejudices. I am not talking about profiling. I am talking about a trained security guard using this specific technique that has been used in Israel for many years and which is being used today in some of our airports. I believe Logan in Boston is one of those airports that is using the technique. So this is a trained guard's assessment.

And my concern is, I think, the burden of proof is shifting from the individual presenting himself at the airport who has to prove that he is who he says he is to the security guard to prove that he is not the person he says he is. That really concerns me.

So I hope that all the members of this panel will work further with us to help us sort this issue out. It is the reason that I did not join as a co-sponsor of this bill, because I felt so strongly that this undermines the security and the purpose of having a secure identification.

So I do look forward to working with our panels, to working with the sponsor of the bill, and I want to thank you, Senator Akaka, for your leadership, and I want to thank the panel.

Senator Akaka, I know that if Senator Lieberman were here he would say that the hearing record is going to remain open for another 15 days for the submission of any questions or additional materials, and I am going to turn it over to you and thank you for your leadership.

I want to thank all of our witnesses today. Thank you.

Senator AKAKA. Thank you very much. I want to thank our Ranking Member who has provided great leadership in this area and thinking into some of the issues that we have been facing and has been so helpful in doing that.

Mr. Schwartz, Mr. Baker's testimony suggests that the REAL ID Act increased privacy protections and that the repeal of the REAL ID would lead to significantly more cases of identity theft. Over the years, as we have worked on oversight of REAL ID, the Center for Democracy and Technology has been an advocate for additional privacy protections both in REAL ID and on other government issues.

Would you address the contention that REAL ID adequately protects privacy and why you believe that additional protections included in PASS ID are needed?

Mr. SCHWARTZ. Thank you, Senator Akaka.

The issue in terms of whether REAL ID improves privacy, I think you can look it up in the record. You can look at it in the notice for proposed rulemaking that DHS put out while Mr. Baker was there, and you can look at the footnote that specifically says that they cannot add privacy controls into the regulations because the law removed the words, privacy and privacy and security protection of personal information, specifically that were in the Intelligence Reform Act.

So, while I do think that DHS did take steps to say we are supposed to protect security and therefore we are going to build in some privacy protections about personal information, they did not go as far as they would have, even according to DHS, as if they had these privacy protections built in.

I think that it was clear, when I served on the negotiated rulemaking, that we were moving in the direction of coming to the right balance there. But when REAL ID came and overturned that committee from its work and that committee's work, it took us many steps back from privacy protections that would have been in place.

So I do think that while you can say that license reform would protect privacy, I do think that is true, and that is why we support license reform. And there are some privacy groups that are more

skeptical of license reform than the Center for Democracy and Technology is.

We still feel that the move toward license reform is important, that even if we were going to repeal it, it should be replaced with another process of negotiated rulemaking, Senator, as you had in your last bill or put the privacy protections into law as you do in PASS ID. So that is why we support those provisions, but this idea that REAL ID would be better than those other two solutions, PASS ID or the original negotiated rulemaking, I think is just demonstrably false just based on what DHS has written about it directly.

Senator AKAKA. Mr. Schwartz, I would like to ask you about an especially important issue that was magnified by the enactment of REAL ID. This is the issue of how to protect the personally identifiable information on the machine-readable zone of drivers' licenses and identification cards.

The Center for Democracy and Technology has been a longtime advocate for additional protection for this information which was put into a common machine-readable format through REAL ID. I understand that there were concerns that eliminating the ability to store electronic data from licenses could be detrimental to fraud and identity theft prevention. Would you please address this issue?

Mr. SCHWARTZ. Sure. I discussed this a little bit with Senator Collins earlier in response to her question about the fraud exemption, but just taking this a step further I think that we should look at what is allowed under PASS ID.

Under PASS ID, any retailer is allowed to take the license and swipe it and to do a comparison to check to make sure this is a real drivers' license that was issued by a State. So they can do that.

They can check and make sure that the information in the machine-readable zone that they have in their database and to do a check immediately on that, that it is the same person.

The only thing they cannot do is take it and swipe that information and store it in the database. It is the ease of aggregation of that data that represents the concern, especially as we know that we are getting the ability to put more and more information into the machine-readable zone.

Today, it is one thing to say, well, most States only have the information that is on the front of the card in the machine-readable zone. In the future, that is not going to be the case. So the real concern is in making sure that while we have this opportunity to discuss security on the card and standards for security on the card, that we are also looking into the future and saying that as we put more and more information into the machine-readable zone we are going to make sure that information is secure.

That information to cardholders is of more concern because you can see what is on the front of the card. You cannot see what is in the machine-readable zone. So, when you give it to someone and you know that they can only use the front of the card to type in information or to scan that, you know that they are only using that information. It is a technological protection to say that if the person swipes the card they can only read the same information that

is on the front of the card, and that is what we should be focused on.

There is also the security threat of turning over more and more information from swiping the card to many individuals. I had a conversation recently with Vivek Kundra who is now the Federal Chief Information Officer (CIO), who used to be the CIO of Washington, DC. He was telling me that while he was in Washington he put out a number of fraud-prevention measures where to ensure that DMV workers could only do a check against the database, and so they could only verify the information in the database. That was the security and the privacy protections put in place to limit the amount of information that a DMV worker could find out about the information.

Those same types of rules should go into effect for other people that have to use the drivers' license and when they want to use that machine-readable zone.

Senator AKAKA. Thank you.

Mr. Baker, your testimony asserts that PASS ID would return us to pre-September 11, 2001, standards for the issuance of identification documents. However, the PASS ID Act actually contains many of the same security requirements as REAL ID including requirements to provide a photo identity document, documentation showing the person's date of birth, proof of the person's Social Security number, documentation showing the person's name and address of principal residence and proof that an individual is in the country lawfully.

Under PASS ID, Social Security numbers and lawful presence would be checked electronically. As with the U.S. passports, identification documents would be validated or authenticated rather than verified with the issuing agency. None of these Federal standards were in place pre-September 11, 2001.

What is the basis for your claim that PASS ID would move States back to pre-September 11, 2001, standards?

Mr. BAKER. I certainly do not mean to suggest that the items that PASS ID requires are not useful. I think they are very useful. By and large, they are the 18 elements that we thought should be done as part of material compliance.

One of the big deadline problems is that under REAL ID, material compliance (meaning those 18 items) is due to be completed at the end of this year. You might have to give States some additional time because of the crisis that they find themselves in, but States knew that was the deadline. They were working toward it, and there were no States that told us they could not do it. Even the ones who said, "we reject REAL ID," nonetheless, also said they expected to be able to do the substance of those 18 items.

What PASS ID does is, it says: You know those 18 items? Do them in 2016, and maybe not even then if there is some litigation or delay over delivering the regs.

Well, that is a terribly long delay for something that most States are close to being able to do now. We should not accept what I think will be much more than 5 years of delay, and that does mean that for the next 5 or 6 years we are getting nothing that we did not have.

You talked about the electronic checks that are done. I think those are useful, but again the lack of ambition is astonishing. We have an E-Verify program for employers that the two Administrations have now embraced. They said people who get money, who are contractors should follow E-Verify. They should check the Social Security number to make sure it matches the name. Then if they do not match, you do not get the job.

Well, there is nothing in here that says you do not get your license if your name and your Social Security number do not match. We have to at least have the same standards that we have for E-Verify. People should be required to produce the DHS ID if they are not American citizens but they are authorized to work. If they produce a passport, the States should check just as every employer is going to check to see if the photos on the passport match.

Those are systems that are available now or about to be rolled out. There is no need to say, I am not sure it will work. It is working today for 150,000 employers, and the States should go through that same process. This bill does not require them to do as much as employers are doing today.

So, in those respects, I think we have stepped substantially back from REAL ID. I do not mean to say that there is nothing here.

We did not, however, because we did not deal with source documents, address the problem that the 9/11 Commission was most concerned about, which was the hijackers getting legitimate IDs by using fake documents. Thank you.

Senator AKAKA. Well, thank you very much for your response.

I would like to ask Mr. Quam whether he has any comments about this.

Mr. QUAM. Thank you, Senator.

I think Mr. Baker grossly underestimates the States.

One, to say that somehow all this will not be done until 2016 makes absolutely no sense. States are going to need every single minute of a 5-year window to bring 245 million drivers back in to get PASS IDs. They are not waiting until the end. They want a system in place that creates the certainty, so they can make the investments and they can start the process, and they want to do it as soon as they possibly can. No one is waiting.

SAVE and SSOLV are verification systems that are not used today. Well, they are used by several States, but this would require all of them to use SAVE and SSOLV.

The fact of the matter is that PASS ID took the best parts and most workable parts of REAL ID and brought them over. He is exactly right about that. And it is because governors were interested in finding the solution, not starting at zero, but starting at where we are, take what works and then actually get the job done.

I actually believe that States are going to aspire to do better than PASS ID. PASS ID will set a floor that States will go beyond. I think States will participate vigorously in the pilot program. I think they want to find solutions. They would like nothing more than to have these systems that protect the privacy, that can add to the verification, that are robust, reliable, and push-button, so that you can actually get citizens through that line quickly, and they know that the ID that they are given represents exactly who they are.

We all share that common goal. To say that we do not is misleading.

I think States are on a page where PASS ID offers solutions. It offers more verification. And, because it can be done, PASS ID meets the 9/11 Commission recommendations where REAL ID actually fails.

Senator AKAKA. Well, thank you very much.

Are there any other comments from our other two panelists?

If not, I want to thank you so much. This has been helpful. Thank you for your support and all that you have done. I want to especially thank you for working with our staff to put this hearing together, and I want to thank you again for moving us this far.

Without question, we are going to have to move on this as quickly as we can, and we will try to do that.

So the hearing record will be open for 15 days until July 30 for the submission of statements and questions for the record.

Again, thank you very much. The hearing is now adjourned.

[Whereupon, at 12:40 p.m., the Committee was adjourned.]

A P P E N D I X

**Opening Statement for Chairman Joseph Lieberman
Homeland Security and Governmental Affairs Committee
“Identification Security: Reevaluating the REAL ID Act”
Washington, DC
July 15, 2009**

Good morning and welcome to this hearing, where we will review the steps that the United States Government has taken, and that state governments have responded to, and that we might ultimately take to achieve the important national goal of keeping fraudulent state identification cards and drivers licenses out of the hands of terrorists and criminals.

I want to welcome Secretary Napolitano, Governor Douglas of Vermont, and our other witnesses on the second panel, and thank you for all the work that you have done on this important matter.

I regret to say that I’m not surprised we are here today. When Congress adopted the so-called REAL ID Act of 2005 as an amendment to a supplemental appropriations bill--without hearings of any kind or any formal public vetting -- we replaced a process for developing federal identification requirements that Senator Collins and I had made part of the Intelligence Reform and Terrorism Prevention Act of 2004, the so-called 9/11 Commission legislation.

In our work, Senator Collins and I took very seriously the finding of the 9-11 Commission that: “All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.” The 9/11 Commission went on to appeal to the federal government “set standards for the issuance of birth certificates and sources of identification, such as driver’s licenses.” With that in mind, we therefore included in the 9/11 legislation of 2004 a requirement that the federal government establish a negotiated rulemaking committee composed of subject matter experts and stakeholders, including, of course, representatives of the states governments, to propose workable identification security standards.

Then came the REAL ID Act of 2005, which was submitted as an amendment to supplemental appropriations legislation. Though I thought some of the parts of the act and the intention of the act were good, I opposed the REAL ID Act because I ultimately thought it laid out a very prescriptive, unworkable and expensive process -- and unfortunately history has borne this out and that is why we are here today, if I may rub it in a little bit. I really believe that if our original 9/11 Commission legislation had been left intact and a rulemaking process had begun and it hadn’t been repealed by REAL ID, we’d have millions more security IDs today instead of being involved in a continuing debate and really a joust between the states and the federal government.

Some states, including Connecticut, are working to implement REAL ID, but the fact is that the legislatures of 13 states have passed laws prohibiting their states from complying with REAL ID as it is presently stands -- and several other states are considering similar legislation.

That is at the risk that their state identification documents will not be accepted by the federal government, for instance for boarding a plane.

That is crisis that brings us here today as we try and answer the question of: what kinds of changes to REAL ID are necessary to achieve a workable solution?

As always in the Congress, we cannot let the perfect be the enemy of the good, but of course we want to ensure that what we consider to be "good" is not diluted so that we in any way compromise our homeland security. I personally believe we can accomplish both goals.

Today we will discuss bi-partisan legislation sponsored by a number of members of this committee-- Senators Akaka, Voinovich, Carper, Tester, and Burris -- which is called the PASS ID Act that reforms REAL ID in an attempt to make it work as intended while trying to ease the strain on our overburdened and underfunded state governments.

The plan retains parts of REAL ID, such as the requirement of a digital photograph and signature and machine-readable coding on state-issued ID cards. And states will still also need to verify an applicant's Social Security number and legal status by checking federal immigration and Social Security databases.

But, the states would also be given more flexibility in issuing the new identification cards while staying, I'm pleased to say, within the REAL ID timetable. In fact, if PASS ID becomes law this year, states must be fully compliant with it before the current REAL ID deadline of 2017.

That is important, I'm sure to all of us, because, any acceptable solution must really work within existing timetables and not delay increased personal identification security.

PASS ID does eliminate a requirement that motor vehicle departments electronically check the validity of some identity documents, such as birth certificates, with the originating agency. I know this change has been a major source of concern. This morning, I want to discuss it with some of our witnesses to see whether the concerns are justified.

PASS ID also strengthens privacy protections by requiring procedures be put in place to prevent the unauthorized access or sharing of information; to require a public notice of privacy policies; and a process for individuals to correct their records.

So let me thank Senators Akaka, Voinovich, and others who joined them -- as well as the Secretary -- for the efforts that you have made in coming up with a plan that can work while not losing sight of the very direct statement of the 9-11 Commission warning us that -- and I quote -- "for terrorists, travel documents are as important as weapons."

I still do have some concerns about PASS ID that I want to explore with our witnesses today. But bottom line, in an age of terrorism, reliable personal identification is an important and urgent matter critical to our homeland security. I hope that this hearing will enable us to move forward and mark up legislation in this committee on this matter in the very near future.

Opening Statement of
Senator Susan M. Collins

“Identification Security: Reevaluating the REAL ID Act”

Committee on Homeland Security and Governmental Affairs
July 15, 2009

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One week from today, we mark the fifth anniversary of the release of the bipartisan 9/11 Commission Report. In examining how terrorists were able to attack America, the Commission found that all but one of the 19 terrorists used drivers’ licenses to board the planes that were used as weapons in the attacks that killed nearly 3,000 people.

The commissioners recognized that easily obtained drivers’ licenses were a security vulnerability, stating, “For terrorists, travel documents are as important as weapons.” And to address this vulnerability, the Commission recommended that the federal government set standards for the issuance of birth certificates and other sources of identification, particularly drivers’ licenses which had proven vital to the terrorists’ ability to carry out their deadly plot.

To call the effort to implement this recommendation “difficult” would be an understatement. Senator Lieberman and I authored provisions in the Intelligence Reform Act of 2004 that established a collaborative committee comprised of federal and state officials, technology experts, and privacy advocates to develop these secure identification standards. Regulations were already being developed in early 2005 when, unfortunately, the House of Representatives repealed these provisions by slipping the REAL ID Act into an urgent war funding bill.

Then, for more than two years, states were left to contemplate the enormity of the task of reissuing new licenses to all drivers by May 2008 while they waited for the Department of Homeland Security to issue the regulations that would tell them how to achieve that requirement. And they waited... and waited... and waited... until January 29, 2008, when a final rule was issued, leaving the states just 103 days until the May 11, 2008, compliance deadline set by the Act.

Complicating the problem, state budgets had little room for the hundreds of millions of dollars it would cost to implement these regulations – and a faltering economy only worsened the financial strain. Another problem was that key information technology systems necessary to implement the law efficiently were not readily available.

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And although identity theft costs the economy billions of dollars and causes much distress to its victims, the Department's regulations failed to address critical privacy issues created by the interconnected systems of databases mandated by the law.

With these problems unresolved and numerous state legislatures protesting REAL ID – or even outright refusing to implement the program – I worked to persuade the Department to provide states an additional 18 months to meet the REAL ID deadline, giving us all time to revisit this issue.

The PASS ID Act that we are discussing today is one attempt to resolve the problems I have described. It refines rather than repeals the law and targets areas where that law imposed unreasonable and costly burdens on states, failed to protect the privacy interests of our citizens, and mandated technical solutions that may not be practical.

One example of these refinements is in the bill's approach to ensuring that each person possesses only one valid license ... from any one state ... at any one time. To meet this goal, REAL ID would have mandated an information sharing system that may not be technically feasible or governed by any basic privacy protections. Instead of scrapping this system altogether, PASS ID would preserve and fund a pilot program to test necessary technology and to permit a careful examination of privacy concerns. This makes sense.

Nonetheless, I recognize the concerns of those who fear that this bill, in addressing problematic portions of the REAL ID Act, may have unintended consequences. Drivers' licenses can be the "keys to the kingdom" for terrorists bent on death and destruction, and states have a responsibility to ensure licenses are tamper-proof and issued only to people whose identity and legal status can be verified.

Certain language in the PASS ID Act may undermine that goal because it would not allow TSA to prevent a passenger from boarding a plane based "solely" on the fact that he or she did not have a compliant license. This provision would eliminate an important incentive for states to adopt federal standards for secure licenses and could impose worrisome restrictions on the discretion of security officials who believe a passenger without a compliant card should not be permitted to board a plane.

As we examine this legislation today, my primary concerns are whether these provisions are moving us toward the security goal set by the 9/11 Commission five years ago while accommodating the legitimate concerns of states and privacy experts.

Specifically, I would like the witnesses to address the following questions:

- Do the provisions of the PASS ID Act create secure licenses that can be kept out of the hands of future terrorists who could use them – as the 9/11 hijackers did – to move freely within the United States?

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- **How much will it cost to implement the PASS ID Act, and how much of the cost should the federal government assume?**
- **Does the PASS ID Act include sufficient privacy protections to ensure that personal information is protected from theft and abuse?**

Today, we roll up our sleeves and once again dig into the work of ensuring that states issue secure licenses – a protection recommended by the 9/11 Commission and one that we owe the American people.

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**“Identification Security: Reevaluating the REAL ID Act”
Statement of Senator Daniel K. Akaka
Committee on Homeland Security and Governmental Affairs
July 15, 2009**

Mr. Chairman, I want to thank you for holding this hearing to further explore the ramifications of REAL ID on States, on security, and on privacy, as well as the proposal that I, along with Senator Voinovich, Carper, Tester, Burris, and other Members, have put forward to fix REAL ID.

I have been a long-time opponent of REAL ID due to concerns about protecting individuals' privacy, as well as the States' inability to implement the burdensome program. REAL ID calls on States to collect and electronically store individuals' personal records when issuing licenses and to share that information with every Department of Motor Vehicles nationwide. This effectively would create a national database containing massive amounts of personal information.

During the last Congress, I chaired two hearings on REAL ID where it became clear that it was simply not workable. Some of the data systems do not yet exist because so many States have balked at the high costs and privacy implications of creating such a system. If REAL ID is implemented, these databases could provide one-stop shopping for identity thieves and become the backbone for a national identification card.

We must act to fix REAL ID. States simply still cannot afford the \$4 billion it would take to implement REAL ID. Over a dozen States have already refused to comply, and several more, like Hawaii, have expressed serious concerns with the program. Without the participation of all States, there will be only a patchwork system for identification security, which means no real security at all.

The bill I am proposing, S. 1261, the Providing for Additional Security in States' Identification Act of 2009, or PASS ID Act, represents a pragmatic approach to resolving many of the most troubling aspects of the REAL ID Act. I worked closely with stakeholders, many of whom are here today, representing a broad range of views, to develop this practical alternative to REAL ID.

The PASS ID Act does exactly what the 9/11 Commission recommended: it sets strong security standards for the issuance of identification cards and driver's licenses. What it does not do is go far beyond that recommendation by requiring the collection of Americans' personal information and storing it in a centralized repository accessible by any State DMV.

Perhaps the most important improvement in our bill is the removal of the mandate that States share all of their driver's license data with each of the other States. This provision created a clear threat to the privacy of all Americans' personal information, posed a great risk for identity theft and fraud, and raised the specter of a national database of all Americans' personal information.

The bill requires States to protect electronic information and, for the first time, any machine readable data stored on identification cards and driver's licenses themselves ensuring it is only used for its intended purposes.

Another change that I want to highlight is the clarification of Americans' right to travel on commercial aircraft and to enter Federal buildings. The current law restricts these rights by requiring a REAL ID compliant ID to board commercial aircraft and to enter federal buildings.

In this country, we cherish the right to travel and the right to petition the government. Americans should not be denied boarding an aircraft or denied entry to most federal buildings solely because they have lost, or do not have, their identification. Instead, such situations should be resolved through additional security screening or other inquiries as needed, as is currently TSA policy and is the case with every other type of security risk.

As important as what would change with PASS ID is what would not change. Individuals would still need to prove that they are lawfully present in the United States, individuals would only be allowed one compliant identification to be used for official purposes, and individuals would need to present the same sources of identifying documents to obtain a compliant license.

This compromise bill does not address all of my concerns with REAL ID. I know that others are disappointed that it does not address all of their concerns. However, the reality that we face right now is that in less than a year, States will be required to comply with a law that is overly burdensome and unworkable. We cannot let the perfect be the enemy of the good, especially when we are working to address a seriously flawed law already on the books.

To date, the Department of Homeland Security, the National Governors Association, National Conference of State Legislatures, the Center for Democracy and Technology, and several law enforcement organizations have endorsed PASS ID. I hope we will move swiftly to ensure its enactment and provide some clarity to States facing REAL ID implementation deadlines.

As always, my goal remains to protect both the security needs and the privacy rights of all Americans, and I will continue to work closely with the Department of Homeland Security to ensure that individual rights and liberties are fully protected during the implementation of PASS ID.

I thank you again, Chairman Lieberman and Ranking Member Collins, for agreeing to hold this hearing. I ask that my full statement from the introduction of PASS ID be included in this hearing's record.

-END-

Statement of Senator Daniel K. Akaka**Introduction of the
Providing for Additional Security in States' Identification Act of 2009
(PASS ID Act)**

Mr. President, today I am, along with Senators Voinovich, Leahy, Tester, Baucus, and Carper, introducing the "Providing for Additional Security in States' Identification Act of 2009," or the "PASS ID Act."

This bill represents a pragmatic approach to resolving many of the most troubling aspects of the REAL ID Act, which has been in place for the past four years. REAL ID was intended to implement the 9/11 Commission's recommendation for enhancing the security of drivers' licenses. I support the 9/11 Commission's recommendation, but I have been a long-time opponent of the existing REAL ID Act due to the tremendous financial burden it imposes on States and the serious privacy risks it creates.

Initially, DHS estimated the cost of implementing REAL ID to be \$23 billion, of which \$14 billion would be borne by the States. In the final regulations, DHS's overall cost estimate decreased to \$10 billion, \$4 billion of which States would have to pay. Many States are facing serious budget shortfalls and simply cannot afford this cost.

Additionally, REAL ID calls for all States to store copies of individuals' documents such as birth certificates and their photographs in databases and to provide all other State Departments of Motor Vehicles with access to that information. REAL ID does not require any privacy protection of these State databases, which would contain massive amounts of personal information. These databases could provide one-stop shopping for identity thieves and the backbone for a national identification database.

Because of these problems, the Department of Homeland Security has been forced to provide a series of extensions for compliance. All 50 States plus the District of Columbia and the territories were granted extensions until December 31, 2009. DHS may automatically grant States further extensions to May 11, 2011, if they meet certain benchmarks for compliance. Under the final regulations, complete implementation is required by December 1, 2017. Even under this drawn out timeline, it is unclear if many States will comply. Several States, including Hawaii, have passed resolutions expressing their opposition to REAL ID. Eleven States have outright rejected REAL ID, putting millions of Americans at risk of not being able to enter Federal facilities or board commercial airplanes next year if they do not meet DHS benchmarks. Americans' personal information could also be compromised if REAL ID were to fully take effect in its current form. This simply cannot be allowed to happen.

Because of my grave concerns with the REAL ID program, during the last Congress, I along with several of my colleagues introduced the Identity Security Enhancement Act, which would have repealed the REAL ID Act and replaced it with a negotiated rulemaking process that would have enhanced the security of State driver's licenses while also providing for strong

(1)

privacy protections. Unfortunately, this bill did not advance, and we are now closer than ever to forcing states to ensure compliance with REAL ID.

I along with my colleagues, the Department of Homeland Security, privacy and civil liberties groups, and the National Governors Association and National Council of State Legislators – representing a broad range of views on REAL ID – have been working together to develop a bill that will address the onerous problems with REAL ID in a practical manner that can win bipartisan support. I believe that the bill we are introducing represents a pragmatic alternative to REAL ID, which will save States considerable money and address the most troubling aspects of the REAL ID Act.

The PASS ID Act does exactly what the 9/11 Commission recommended: it sets strong security standards for the issuance of identification cards and driver's licenses. What it does not do is go far beyond that recommendation by requiring the collection of Americans' personal information and storing it in a centralized repository accessible by any State government. This legislation starts with repealing the existing flawed REAL ID Act, and replaces it with a modification of the original act that peels away the most troubling aspects that add high costs without real security benefits, and implements strong new protections to protect the privacy rights of individuals.

Perhaps the most important improvement in the PASS ID Act is the removal of the mandate that States share all of their driver's license data with each of the other States. This provision created a clear risk to the privacy of all Americans' personal information and posed a great risk for identity theft and fraud. Moreover, it was this provision that raised the specter of a national database of all Americans' personal information. The PASS ID Act instead will allow States to continue to maintain their own individual databases with more stringent security requirements.

In addition, the PASS ID Act includes all of the privacy protections called for in my previous bill, the Identity Security Enhancement Act. The bill calls on the States to put procedures in place to protect information that is stored or transmitted in an electronic format. The bill also for the first time protects any machine readable data stored on identification cards and driver's licenses themselves. In particular, Social Security numbers, which are not allowed to be printed on the face of a license, would no longer be allowed to be stored in the machine readable zone (MRZ) of a license either.

Because of the ability of licenses to hold more and more electronic information, it is also important to institute important new protections for the use of the data stored on licenses. A new industry is growing up surrounding the collection and sale of data stored in MRZs for marketing purposes. Often people are not informed that their personal information is being collected and might be tracked with their purchases or sold to third parties. This bill would allow scanning of licenses to support law enforcement purposes but not for other purposes. For example, a store would be able to scan a driver's license to double check that the patron is old enough to buy alcohol, but it would not be allowed to sell the information on the card to marketers. This is an important step forward to ensure that privacy and security protections keep pace with technology, while still ensuring that the MRZ can be used for its intended purposes.

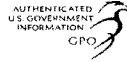
(2)

The other change that I want to point out is the clarification of Americans' right to travel on commercial aircraft and to enter Federal buildings. The current law restricts these rights by requiring a REAL ID to board commercial aircraft and to enter federal buildings. This bill recognizes the importance of secure identification to increase the safety and security of commercial air travel and a narrower range of federal buildings. Compliant State identification will remain the preferred method to board an aircraft, but the PASS ID Act will clarify that people cannot be denied boarding solely because they lack secure identification. The Transportation Security Administration will resolve any security concerns with people lacking a PASS ID the same way they resolve other security issues – with additional screening or other inquiries as needed. Additionally, PASS ID would narrow the secure identification requirement from all federal buildings to only federal facilities containing mission functions critical to homeland security, national security, or defense.

This bill does not address all of my concerns with REAL ID. Some others will be disappointed that it does not address all of their concerns. However, the reality that we face is that in less than a year, States will be required to comply with a law on the books that simply is overly burdensome and unworkable. I believe that the legislation introduced today is the best bill that can garner broad bipartisan support. It represents a strong step toward fixing the most serious shortfalls in the REAL ID Act and would introduce long-overdue, important new protections. We cannot let the perfect be the enemy of the good, especially when we are working to address a seriously flawed law already on the books.

I urge my colleagues to talk to your Governors and other State government officials, your constituents, and to privacy experts to understand just how much this legislation does to improve existing law. By taking the time to work with all stakeholders, I think that we have achieved a solution that leaves us much better off than we are today.

As always, my goal remains to ensure the privacy rights of all Americans, and I will continue to work closely with the Department of Homeland Security to ensure that privacy rights are protected fully during the implementation of PASS ID.



II

111TH CONGRESS
1ST SESSION

S. 1261

To repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mr. AKAKA (for himself, Mr. VOINOVICH, Mr. LEAHY, Mr. TESTER, Mr. BAUCUS, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Providing for Addi-
3 tional Security in States’ Identification Act of 2009” or
4 the “PASS ID Act”.

5 **SEC. 2. REPEAL.**

6 Title II of the REAL ID Act of 2005 (Division B
7 of Public Law 109–13) is repealed.

8 **SEC. 3. IDENTIFICATION SECURITY.**

9 (a) IN GENERAL.—Title II of the Homeland Security
10 Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding
11 at the end the following:

12 **“Subtitle E—Improved Security for**
13 **Driver’s Licenses and Personal**
14 **Identification Cards**

15 **“SEC. 241. DEFINITIONS.**

16 “In this subtitle:

17 “(1) DRIVER’S LICENSE.—The term ‘driver’s li-
18 cense’ means a motor vehicle operator’s license, as
19 defined in section 30301 of title 49, United States
20 Code.

21 “(2) IDENTIFICATION CARD.—The term ‘identi-
22 fication card’ means a personal identification card,
23 as defined in section 1028(d) of title 18, United
24 States Code, issued by a State.

25 “(3) MATERIALLY COMPLIANT.—A State is
26 ‘materially compliant’ if the State has certified to

•S 1261 IS

1 the Secretary that the State has commenced issuing
2 driver's licenses and identification cards that are
3 compliant with the requirements of this subtitle.

4 “(4) OFFICIAL PURPOSE.—The term ‘official
5 purpose’ means—

6 “(A) accessing Federal facilities that con-
7 tain mission functions critical to homeland se-
8 curity, national security, or defense;

9 “(B) accessing nuclear power plants; or

10 “(C) boarding federally regulated commer-
11 cial aircraft.

12 “(5) SECRETARY.—The term ‘Secretary’ means
13 the Secretary of Homeland Security.

14 “(6) STATE.—The term ‘State’ means a State
15 of the United States, the District of Columbia, Puer-
16 to Rico, the Virgin Islands, Guam, American Samoa,
17 and the Commonwealth of the Northern Mariana Is-
18 lands.

19 **“SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND**
20 **ISSUANCE STANDARDS FOR FEDERAL REC-**
21 **OGNITION.**

22 “(a) MINIMUM STANDARDS FOR FEDERAL USE.—

23 “(1) IN GENERAL.—Beginning 1 year after the
24 date on which final regulations are issued to imple-

1 ment this subtitle, pursuant to section 5 of the
2 PASS ID Act—

3 “(A) a Federal agency may not accept, for
4 any official purpose, a driver’s license or identi-
5 fication card issued by a State to any person
6 unless the State is materially compliant; and

7 “(B) no person shall be denied boarding a
8 commercial aircraft solely on the basis of failure
9 to present a driver’s license or identification
10 card issued pursuant to this subtitle.

11 “(2) AGENCY ACCEPTANCE.—Beginning 6 years
12 after the date on which final regulations are issued
13 to implement this subtitle, pursuant to section 5 of
14 the PASS ID Act, a Federal agency may not accept,
15 for any official purpose, a driver’s license or identi-
16 fication card unless the license or card complies with
17 subsection (b).

18 “(3) STATE CERTIFICATIONS.—The Secretary
19 shall determine whether a State is meeting the re-
20 quirements of this section based on certifications
21 made by the State to the Secretary. Such certifi-
22 cations shall be made at such times and in such
23 manner as the Secretary, in consultation with the
24 Secretary of Transportation, may prescribe by regu-
25 lation.

1 “(4) CERTIFICATION OF OTHER IDENTIFICA-
2 TION DOCUMENTS.—The Secretary may certify any
3 driver’s license or identification card, including an
4 Enhanced Driver’s License designated by the Sec-
5 retary under section 7209 of the 9/11 Commission
6 Implementation Act of 2004, as compliant with the
7 requirements of this subtitle if the Secretary, after
8 review, determines such license or card meets the re-
9 quirements of this subtitle.

10 “(b) MINIMUM DOCUMENT REQUIREMENTS.—To
11 meet the requirements of this section, a State shall in-
12 clude, at a minimum, the following information and fea-
13 tures on each driver’s license and identification card
14 issued to a person by the State:

15 “(1) The person’s legal name.

16 “(2) The person’s date of birth.

17 “(3) The person’s gender.

18 “(4) The person’s driver’s license or identifica-
19 tion card number.

20 “(5) A digital photograph of the person.

21 “(6) The person’s address of principal resi-
22 dence, except—

23 “(A) as provided for under section 827 of
24 the Violence Against Women Act (Public Law
25 109–162); or

1 “(B) for any individual who a State deter-
2 mines should be exempted from the requirement
3 under this paragraph to protect the safety or
4 security of the applicant.

5 “(7) The person’s signature.

6 “(8) A combination of security features de-
7 signed to protect the physical integrity of the docu-
8 ment, including the prevention of tampering, coun-
9 terfeiting, or duplication of the document for fraudu-
10 lent purposes.

11 “(9) A common machine-readable technology,
12 containing the data elements available on the face of
13 a driver’s license or identification card. A person’s
14 social security number may not be included in these
15 data elements.

16 “(10) A unique symbol designated by the Sec-
17 retary to indicate compliance with the requirements
18 under this section.

19 “(c) MINIMUM ISSUANCE STANDARDS.—

20 “(1) IN GENERAL.—To meet the requirements
21 of this section, for all driver’s licenses and identifica-
22 tion cards issued under this subtitle at least 1 year
23 after the date on which final regulations are issued
24 to implement this subtitle, pursuant to section 5 of
25 the PASS ID Act, a State shall require, at a min-

1 imum, presentation and validation of the following
2 information before issuing a driver's license or iden-
3 tification card to a person:

4 “(A) A photo identity document, except
5 that a non-photo identity document is accept-
6 able if it includes both the person's full name
7 and date of birth.

8 “(B) Documentation showing the person's
9 date of birth.

10 “(C) Proof of the person's social security
11 account number or verification that the person
12 is not eligible for a social security account num-
13 ber.

14 “(D) Documentation showing the person's
15 name and address of principal residence.

16 “(2) SPECIAL REQUIREMENTS.—

17 “(A) IN GENERAL.—To meet the require-
18 ments of this section, a State shall comply with
19 the minimum standards of this paragraph.

20 “(B) EVIDENCE OF LAWFUL STATUS.—Be-
21 fore issuing a driver's license or identification
22 card to a person, a State shall verify that the
23 person—

24 “(i) is a citizen or national of the
25 United States;

1 “(ii) has been granted lawful perma-
2 nent residence in the United States;

3 “(iii) has been granted asylum or
4 withholding of removal, or has been admit-
5 ted into the United States as a refugee;

6 “(iv) has been granted temporary resi-
7 dence in the United States;

8 “(v) has been paroled into the United
9 States under section 212(d)(5) of the Im-
10 migration and Nationality Act (8 U.S.C.
11 1182(d)(5)), subject to such exceptions as
12 the Secretary, in the Secretary’s
13 unreviewable discretion, may prescribe for
14 aliens paroled into the United States for
15 prosecution or other categories of paroled
16 aliens;

17 “(vi) is a lawful nonimmigrant in the
18 United States;

19 “(vii) has a pending application for
20 asylum or withholding of removal and has
21 been granted employment authorization;

22 “(viii) has been granted temporary
23 protected status in the United States or
24 has a pending application for temporary

1 protective status and has been granted em-
2 ployment authorization;

3 “(ix) has been granted deferred action
4 status;

5 “(x) has a pending application for ad-
6 justment of status to that of an alien law-
7 fully admitted for permanent residence in
8 the United States or conditional perma-
9 nent resident status in the United States;

10 “(xi) has otherwise been granted em-
11 ployment authorization in the United
12 States; or

13 “(xii) is otherwise an alien lawfully
14 present in the United States, as deter-
15 mined by the Secretary in the Secretary’s
16 unreviewable discretion.

17 “(C) TEMPORARY DRIVER’S LICENSES AND
18 IDENTIFICATION CARDS.—

19 “(i) IN GENERAL.—If a person pre-
20 sents evidence under any of clauses (iv)
21 through (xii) of subparagraph (B), the
22 State may only issue a temporary driver’s
23 license or temporary identification card to
24 the person that is valid for a time period
25 ending not later than the expiration date

1 of the applicant's authorized stay in the
2 United States or, if there is no such expi-
3 ration date, for a period not to exceed 1
4 year. The Secretary may, in the Sec-
5 retary's unreviewable discretion, authorize
6 the issuance of temporary driver's licenses
7 or temporary identification cards, for peri-
8 ods longer than 1 year, to employees of
9 international organizations and to other
10 nonimmigrant aliens who are authorized to
11 remain in the United States for an indefi-
12 nite period.

13 “(ii) DISPLAY OF EXPIRATION
14 DATE.—A temporary driver's license or
15 temporary identification card issued pursu-
16 ant to this subparagraph shall clearly state
17 the date on which it expires.

18 “(iii) RENEWAL.—A temporary driv-
19 er's license or temporary identification
20 card issued pursuant to this subparagraph
21 may be renewed only upon verification of
22 the applicant's current lawful status.

23 “(3) VALIDATION OF DOCUMENTS.—To meet
24 the requirements of this section, a State—

1 “(A) shall not accept any foreign docu-
2 ment, other than an official passport, to satisfy
3 a requirement of paragraph (1) or (2); and

4 “(B) not later than 1 year after the date
5 on which final regulations are issued to imple-
6 ment this subtitle, pursuant to section 5 of the
7 PASS ID Act, shall enter into a memorandum
8 of understanding with the Secretary to rou-
9 tinely utilize the automated system known as
10 Systematic Alien Verification for Entitlements
11 established under section 121 of the Immigra-
12 tion Reform and Control Act of 1986 (Public
13 Law 99-603), to verify the legal presence sta-
14 tus of a person, other than a United States cit-
15 izen or national, who is applying for a driver’s
16 license or identification card.

17 “(d) OTHER REQUIREMENTS.—To meet the require-
18 ments of this section, a State shall adopt the following
19 practices in the issuance of driver’s licenses and identifica-
20 tion cards:

21 “(1)(A) Employ technology to capture digital
22 images of identity source documents so that the im-
23 ages can be retained in electronic storage in a
24 transferrable format for at least as long as the appli-

1 cable driver's license or identification card is valid;
2 or

3 “(B) retain paper copies of source documents
4 for at least as long as the applicable driver's license
5 or identification card is valid.

6 “(2) Subject each person who submits an appli-
7 cation for a driver's license or identification card to
8 mandatory facial image capture.

9 “(3) Establish an effective procedure to confirm
10 or verify a renewing applicant's information.

11 “(4) Confirm with the Social Security Adminis-
12 tration a social security account number presented
13 by a person using the full social security account
14 number. In the event that a social security account
15 number is already registered to or associated with
16 another person to which any State has issued a driv-
17 er's license or identification card, the State may use
18 any appropriate procedures to resolve nonmatches.

19 “(5) Establish an effective procedure to confirm
20 that a person submitting an application for a driv-
21 er's license or identification card is terminating or
22 has terminated any driver's license or identification
23 card issued pursuant to this section to such person
24 by a State.

1 “(6) Provide for the physical security of loca-
2 tions where driver’s licenses and identification cards
3 are produced and the security of document materials
4 and papers from which driver’s licenses and identi-
5 fication cards are produced.

6 “(7) Establish appropriate administrative and
7 physical safeguards to protect the security, confiden-
8 tiality, and integrity of personally identifiable infor-
9 mation collected and maintained at locations at
10 which driver’s licenses or identification documents
11 are produced or stored, including—

12 “(A) procedures to prevent the unauthor-
13 ized access to, or use of, personally identifiable
14 information;

15 “(B) public notice of security and privacy
16 policies, including the use, storage, access to,
17 and sharing of personally identifiable informa-
18 tion;

19 “(C) the establishment of a process
20 through which individuals may access, amend,
21 and correct, as determined appropriate by the
22 State, their own personally identifiable informa-
23 tion.

1 “(8) Subject all persons authorized to manufac-
2 ture or produce driver’s licenses and identification
3 cards to appropriate security clearance requirements.

4 “(9) Establish fraudulent document recognition
5 and document validation training programs for ap-
6 propriate employees engaged in the issuance of driv-
7 er’s licenses and identification cards.

8 “(10) Limit the period of validity of all driver’s
9 licenses and identification cards that are not tem-
10 porary to a period that does not exceed 8 years.

11 “(e) EXCEPTIONS PROCESS.—

12 “(1) IN GENERAL.—States shall establish an
13 exceptions process to reasonably accommodate per-
14 sons who, for extraordinary reasons beyond their
15 control, are unable to present the necessary docu-
16 ments listed in subsection (c)(1).

17 “(2) ALTERNATIVE DOCUMENTS.—Alternative
18 documents accepted under an exceptions process es-
19 tablished pursuant to paragraph (1) may not be
20 used to demonstrate lawful presence under sub-
21 section (c)(2) unless such documents establish that
22 the person is a citizen or national of the United
23 States.

24 “(3) REPORT.—States shall include a report on
25 the use of exceptions made under this subsection,

1 which shall not include any personally identifiable
2 information, as a component of the certification re-
3 quired under subsection (a)(3).

4 “(f) USE OF FEDERAL SYSTEMS.—States shall not
5 be required to pay fees or other costs associated with the
6 use of the automated systems known as Systematic Alien
7 Verification for Entitlements and Social Security On-Line
8 Verification, or any other Federal electronic system, in
9 connection with the issuance of driver’s licenses or identi-
10 fication cards, in accordance with this subtitle.

11 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to prohibit a State from issuing
13 driver’s licenses and identification cards that do not com-
14 ply with the requirements of this section.

15 **“SEC. 243. USE OF FALSE DRIVER’S LICENSE AT AIRPORTS.**

16 “(a) IN GENERAL.—The Secretary shall enter, into
17 the appropriate aviation security screening database, ap-
18 propriate information regarding any person convicted of
19 using a false driver’s license at an airport.

20 “(b) DEFINITIONS.—In this section:

21 “(1) AIRPORT.—The term ‘airport’ has the
22 meaning given such term under section 40102 of
23 title 49, United States Code.

1 “(2) FALSE.—The term ‘false’ has the meaning
2 given such term under section 1028(d) of title 18,
3 United States Code.

4 **“SEC. 244. GRANTS TO STATES.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—There is established a
7 State Driver’s License Enhancement Grant Program
8 to award grants to assist States in conforming to
9 the minimum standards set forth in this subtitle.

10 “(2) DISTRIBUTION OF GRANTS.—The Sec-
11 retary, through the Administrator of the Federal
12 Emergency Management Agency, shall distribute
13 grants awarded under this section to States that
14 submit an application as follows:

15 “(A) PROPORTIONAL ALLOCATION.—Not
16 less than $\frac{2}{3}$ of the amounts appropriated for
17 grants under this section shall be allocated to
18 each State in the ratio that—

19 “(i) the number of driver’s licenses
20 and identification cards issued by such
21 State in the most recently ended calendar
22 year; bears to

23 “(ii) the number of driver’s licenses
24 and identifications cards issued by all

1 States in the most recently ended calendar
2 year.

3 “(B) REMAINING ALLOCATION.—The Sec-
4 retary may allocate to States any amounts ap-
5 propriated for grants under this section that
6 are not allocated under subparagraph (A) in
7 such manner as, in the Secretary’s discretion,
8 will most effectively assist in achieving the goals
9 of this subtitle.

10 “(C) MINIMUM ALLOCATION.—In allo-
11 cating funds under this section, the Secretary
12 shall ensure that for each fiscal year—

13 “(i) except as provided under clause
14 (ii), each State receives not less than an
15 amount equal to 0.35 percent of the total
16 funds appropriated for grants under this
17 section for that fiscal year; and

18 “(ii) American Samoa, the Common-
19 wealth of the Northern Mariana Islands,
20 Guam, and the Virgin Islands each receive
21 not less than an amount equal to 0.08 per-
22 cent of the total funds appropriated for
23 grants under this section for that fiscal
24 year.

1 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary, for
3 each of the fiscal years 2010 through 2015, such sums
4 as may be necessary to carry out this section.

5 **“SEC. 245. STATE-TO-STATE ONE DRIVER, ONE LICENSE**
6 **DEMONSTRATION PROJECT.**

7 “(a) ESTABLISHMENT.—The Secretary, in consulta-
8 tion with the Secretary of Transportation, shall establish
9 a State-to-State 1 driver, 1 license demonstration project.

10 “(b) PURPOSE.—The demonstration project estab-
11 lished under this section shall include an evaluation of the
12 feasibility of establishing an electronic system to verify
13 that an applicant for a driver’s license or identification
14 card issued in accordance with this subtitle does not retain
15 a driver’s license or identification card issued in accord-
16 ance with this subtitle by another State.

17 “(c) REQUIREMENTS.—The demonstration project
18 shall include a review of—

19 “(1) the costs affiliated with establishing and
20 maintaining an electronic records system;

21 “(2) the security and privacy measures nec-
22 essary to protect the integrity and physical security
23 of driver’s licenses; and

24 “(3) the appropriate governance structure to
25 ensure effective management of the electronic

1 records system, including preventing the unauthor-
2 ized use of information in the system, and ensuring
3 the security and confidentiality of personally identifi-
4 able information.

5 “(d) SAVINGS PROVISION.—Nothing in this section
6 may be construed to—

7 “(1) authorize the creation of a national data-
8 base of driver’s license information; or

9 “(2) authorize States direct access to the motor
10 vehicle database of another State.

11 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary for
13 each of the fiscal years 2010 through 2012 such sums as
14 may be necessary to carry out this section.

15 **“SEC. 246. AUTHORITY.**

16 “(a) PARTICIPATION OF SECRETARY OF TRANSPOR-
17 TATION AND STATES.—All authority to issue regulations,
18 set standards, and issue grants under this subtitle shall
19 be carried out by the Secretary, in consultation with the
20 Secretary of Transportation and the States.

21 “(b) EXTENSIONS OF DEADLINES.—The Secretary
22 may grant to a State an extension of time to meet the
23 requirements of section 242(a)(1) if the State provides
24 adequate justification for noncompliance.

1 **"SEC. 247. LIMITATION ON STATUTORY CONSTRUCTION.**

2 "Nothing in this subtitle may be construed to—

3 "(1) affect the authorities or responsibilities of
4 the Secretary of Transportation or the States under
5 chapter 303 of title 49, United States Code; or

6 "(2) preempt State privacy laws that are more
7 protective of personal privacy than the requirements
8 of this subtitle or the standards or regulations pro-
9 mulgated to implement this subtitle, provided that
10 such State laws are consistent with this subtitle and
11 the regulations prescribed pursuant to this sub-
12 title.".

13 (b) **TECHNICAL AMENDMENT.**—Section 1(b) of the
14 Homeland Security Act of 2002 (Public Law 107–296)
15 is amended by inserting after the item relating to section
16 235 the following:

"Subtitle E—Improved Security for Driver's Licenses and Personal
Identification Cards

"Sec. 241. Definitions.

"Sec. 242. Minimum document requirements and issuance standards for Fed-
eral recognition.

"Sec. 243. Use of false driver's license at airports.

"Sec. 244. Grants to States.

"Sec. 245. State-to-State one driver, one license demonstration project.

"Sec. 246. Authority.

"Sec. 247. Limitation on statutory construction.".

17 **SEC. 4. USE OF DRIVER'S LICENSE OR IDENTIFICATION**

18 **CARD DATA BY PRIVATE ENTITIES.**

19 Chapter 123 of title 18, United States Code is
20 amended—

1 (1) in section 2722, by adding at the end the
2 following:

3 “(c) COPYING INFORMATION FROM DRIVERS LI-
4 CENSES OR IDENTIFICATION CARDS.—It shall be unlawful
5 for any person, knowingly and without lawful authority—

6 “(1) to scan the information contained in the
7 machine readable component of a driver’s license or
8 identification card; or

9 “(2)(A) to resell, share or trade that informa-
10 tion with any other third parties;

11 “(B) track the use of a driver’s license or iden-
12 tification card; or

13 “(C) store the information collected.”;

14 (2) in section 2724(a), by inserting “driver’s li-
15 cense, or identification card,” after “motor vehicle
16 record,”;

17 (3) in section 2725—

18 (A) by redesignating paragraph (2) as
19 paragraph (6), and adding “and” at the end;

20 (B) by redesignating paragraph (3) as
21 paragraph (7);

22 (C) by redesignating paragraph (4) as
23 paragraph (3), and striking “and” at the end;

1 (D) by redesignating paragraph (5) as
2 paragraph (2), and striking the period at the
3 end and inserting a semicolon;

4 (E) by redesignating paragraph (1) as
5 paragraph (5);

6 (F) by inserting before paragraph (2), as
7 redesignated, the following:

8 “(1) ‘driver’s license’ means a motor vehicle op-
9 erator’s license, as defined in section 30301 of title
10 49, United States Code;” and

11 (G) by inserting after paragraph (3), as re-
12 designated, the following:

13 “(4) ‘identification card’ means a personal iden-
14 tification card, as defined in section 1028(d) of title
15 18, United States Code, issued by a State.”

16 **SEC. 5. RULEMAKING.**

17 (a) IN GENERAL.—Not later than 9 months after the
18 date of the enactment of this Act, the Secretary, after pro-
19 viding notice and an opportunity for public comment shall
20 issue final regulations to implement subtitle E of title II
21 of the Homeland Security Act of 2002, as added by section
22 3.

23 (b) CONTENT.—The regulations issued pursuant to
24 subsection (a)—

1 (1) shall include procedures and requirements
2 that—

3 (A) protect the privacy rights of individ-
4 uals who apply for and hold a driver's license
5 or personal identification card;

6 (B) protect the constitutional rights and
7 civil liberties of individuals who apply for and
8 hold a driver's licenses or personal identification
9 card;

10 (2) shall include procedures to protect any per-
11 sonally identifiable information electronically trans-
12 mitted;

13 (3) shall establish a process through which indi-
14 viduals may access, amend, and correct, as deter-
15 mined appropriate by the Secretary, their own per-
16 sonally identifiable information in any Federal data-
17 bases used in complying with this Act;

18 (4) may not require a single design or num-
19 bering system to which driver's licenses or personal
20 identification cards issued by all States shall con-
21 form; and

22 (5) shall only apply to driver's licenses or iden-
23 tification cards issued pursuant to subtitle E of title
24 II of the Homeland Security Act of 2002, as added
25 by section 3.

1 **SEC. 6. SAVINGS PROVISION.**

2 (a) **EFFECT OF REPEAL.**—Nothing in section 2 shall
3 affect the amendment or the repeal set forth in sections
4 203(a) and 206 of the REAL ID Act of 2005.

5 (b) **EFFECT OF COMPLETED ADMINISTRATIVE AC-**
6 **TIONS.**—Completed personnel actions, agreements, grants,
7 and contracts undertaken by an agency—

8 (1) shall not be affected by any provision of this
9 Act, or any amendment made by this Act; and

10 (2) shall continue in effect according to their
11 terms until amended, modified, superseded, termi-
12 nated, set aside, or revoked by an officer of the
13 United States, by a court of competent jurisdiction,
14 or by operation of law.

○

**OPENING STATEMENT
OF
SENATOR GEORGE V. VOINOVICH
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
“IDENTIFICATION SECURITY: REEVALUATING THE REAL ID ACT”**

WEDNESDAY, JULY 15, 2009

Mr. Chairman, thank you for convening today's hearing about such an important issue.

I also want to thank the champion of the PASS ID Act, Senator Akaka, for his work on this issue. Senator Akaka has been working to address concerns with the REAL ID Act since 2006, and I am proud to cosponsor this bill that addresses those concerns while still fulfilling the 9/11 Commission recommendation that the federal government set standards for the issuance of driver's licenses and identification cards.

I have joined Senator Akaka's efforts primarily for three reasons. First, I have often expressed concerns with the cost the REAL ID Act imposes on states.

The Department of Homeland Security, or DHS, estimates the REAL ID Act will cost states almost \$4 billion, and the NGA estimates it will cost states \$11 billion. As a former Mayor and Governor, I have first-hand experience with the impact such costs can have on the ability of state and local governments to provide critical services to their citizens, especially given current budgetary constraints, and I look forward to hearing from Governor Douglas and the NGA today about this matter.

I was also very unhappy with the process that led to the REAL ID Act's enactment as part of the FY2005 Emergency Supplemental Appropriations conference report without opportunity for Senate debate or amendment, and without state input.

The concern and consternation that has resulted from the REAL ID Act, including at least thirteen states enacting legislation opposing the law, is a classic example of the problems that occur when regular order is short circuited and there is no opportunity for robust debate.

Lastly, I have expressed concerns about the fact that the REAL ID Act calls for states to use databases that are not fully operational.

For example, the REAL ID Act envisions states using the Electronic Verification of Vital Events database to verify each driver's license applicant's birth certificate. But that database is not fully connected to allow verification of birth certificates from many jurisdictions.

The Providing for Additional Security in States Identification, or PASS ID, Act of 2009 addresses these and other concerns while still setting uniform standards for the issuance of driver's licenses and identification cards. In other words, the PASS ID Act addresses many of the problematic provisions of the REAL ID Act while still ensuring that a key 9/11 Commission recommendation is carried out.

Just like the REAL ID Act, the PASS ID Act would require that driver's licenses include certain information about the card holder and security features to be accepted for federal purposes.

The PASS ID Act would require verification of an applicant's legal status in the United States using the Systematic Alien Verification for Entitlements database, just like the REAL ID Act does.

As with the REAL ID Act, the PASS ID Act requires confirmation of an applicant's social security number using the Social Security On-Line Verification database.

It is also important to note what the PASS ID Act does not do.

The PASS ID Act does not allow states to rubber-stamp applicants' source documents. Instead, PASS ID allows states to validate information in instances when databases are not fully operational or connected.

The PASS ID Act does not give states money without accountability or fiscal responsibility. In reality, there is little difference between the REAL ID grant program and the PASS ID grant program.

The PASS ID Act does not weaken airport security by allowing anyone to board a commercial aircraft; rather, the bill provides that "no person shall be denied boarding a commercial aircraft solely on the basis of failure to present a" PASS ID. The prior Administration acknowledged that under the REAL ID Act this would indeed be the case by stating in the REAL ID Final Rule that "travelers will be able to use identification other than a REAL ID driver's license to board an aircraft."

Additionally, the Transportation Security Administration has procedures in place for passengers who do not or cannot present a secure form of identification. Among other things, such individuals may be subject to additional screening.

Lastly, the PASS ID Act does not end DHS' practice of allowing grants to be given to states to create an information-sharing system to ensure that applicants no longer hold driver's licenses from other states.

Rather, the bill codifies a practice DHS began in fiscal year 2008 to fund a multistate project to improve state and inter-state data verification capabilities.

I want to thank our witnesses for appearing here today to discuss the PASS ID Act. I have often said that we must implement the 9/11 Commission recommendations in a way that is intelligent, thoughtful, and involves good management practices. I believe that the PASS ID Act does just that.

Thank you, Mr. Chairman.

**Prepared Statement of Senator Roland W. Burris
July 15, 2009**

Thank you Chairman Lieberman and Ranking Member Collins. I'm pleased to be here today to discuss an issue of national importance: the security of our driver's licenses and identification cards.

We are finding now more than ever that setting effective yet reasonable national standards for driver's licenses and identification cards is vital to our domestic security. Everyday documents like a driver's license, a social security card, and even household mail can be used by criminals to obtain fraudulent identification documents.

It is our responsibility in Congress to combat this problem and enact laws that States can comply with. For a secure identification card system to be possible, we need cooperation from all jurisdictions. Right now this is not happening.

I come from a state that has voiced its concerns by passing a joint resolution in opposition to the REAL ID Act. Its funding, actual implementation status, and the burdensome requirements it places on states are all issues of contention I feel we can strengthen. One way to do this is to consider the advantage the PASS ID Act gives our states in developing and improving identification and information sharing systems.

In talking with constituents and individuals at the state level, it is evident that while there will always be privacy and security concerns, the benefits of having a tolerable secure licensing system in place far outweighs continuing with a system many do not feel comfortable with.

I look forward to the panelists testimony today and I am open to any recommendations they might have as to how we can strengthen our identity security laws.

82

The Honorable Janet Napolitano

Secretary

United States Department of Homeland Security

Testimony on

“Identification Security: Reevaluating the Real ID Act”

Before the

United States Senate

Committee on Homeland Security and Governmental Affairs

Dirksen 342

July 15, 2009

10:00 a.m.

Page 1 of 9

Chairman Lieberman, Senator Collins, and members of the Committee: Thank you for your leadership on homeland security issues, and thank you for holding this important hearing today on how the passage of the Providing Additional Security in States' Identification Act of 2009, also called PASS ID, will enhance our Nation's security. The Department of Homeland Security (DHS) provided technical assistance to PASS ID's Senate sponsors in drafting this bill, and we look forward to continue working with Congress on the bill as it moves through the legislative process. I urge this Committee to mark up PASS ID promptly so it can be considered by both houses of Congress and signed into law this calendar year.

PASS ID is a critical piece of national security legislation that will fix the REAL ID Act of 2005 and institute strong security standards for government-issued identification. PASS ID will fulfill a key recommendation of the 9/11 Commission, that the federal government set standards for identification such as driver's licenses and non-driver identification cards – and this bill will do so in a way that states will implement, rather than disregard. PASS ID will enact the same strong security standards set out by REAL ID as quickly as REAL ID – but, critically, this bill provides a workable way to get there.

We must work to keep terrorists and other criminals from obtaining false identification – and in order to do that, we need to have consistent, strong standards for identification documents that all states can implement. The 9/11 Commission was clear about this. But the REAL ID Act is unlikely to be implemented by the states as Congress intended, and a new approach is needed if we are to accomplish the law's goals.

As a former Governor and former chair of the National Governors Association, I can attest that the states strongly support the goals of the REAL ID Act, but many feel that they didn't have an adequate opportunity to help shape the law, and find it fundamentally flawed. Indeed, 12 states have so far passed legislation outright rejecting it, two states have passed legislation refusing to implement it without significant conditions being met, 11 states have passed resolutions opposing it, and many other states are refusing to implement it.¹ PASS ID was built with the states, maintaining strong security standards and introducing enough changes in implementing those same standards as to provide states a system in which they will participate. This, unlike the status quo, will yield the progress we need on secure identification.

PASS ID's Senate sponsors – Senators Akaka, Voinovich, Baucus, Carper, Leahy and Tester – along with the Department of Homeland Security and the National Governors Association (NGA), collaborated with state and local governments and law enforcement to draft a bill to fix REAL ID and institute strong standards for secure identification. PASS ID enjoys the support of Democrats and Republicans in Congress, Governors and state legislators throughout the country, and state, local and federal law enforcement groups. Governor Jim Douglas of Vermont, the incoming Chair of the NGA,

¹ Those states with laws prohibiting compliance with REAL ID are Alaska, Arizona, Idaho, Louisiana, Maine, Minnesota, Montana, New Hampshire, Oklahoma, Oregon, South Carolina, and Washington. Georgia and Virginia have more conditional laws prohibiting themselves from complying with REAL ID. Missouri's legislature has passed a bill prohibiting REAL ID implementation that is before the governor at the time of this testimony's submission. Arkansas, Colorado, Hawaii, Illinois, Missouri, Nebraska, Nevada, North Dakota, and South Dakota have passed concurrent or joint legislative resolutions in opposition to REAL ID. Pennsylvania's two legislative chambers have passed separate resolutions opposing it. The Michigan House has also passed a resolution against REAL ID.

and Sheriff Lee Baca from Los Angeles County are here to discuss the reasons why PASS ID has won support from the states and the law enforcement community.

The need for Congress to fix REAL ID is urgent. If Congress fails to enact new legislation, we will continue to have a law on the books that does not meet the security needs of our Nation. We cannot leave an important recommendation of the 9/11 Commission unfulfilled.

There is another urgent reason for acting quickly. As it currently stands, the next stage of REAL ID implementation – scheduled for the end of 2009 – would result in major complications for the residents of 12 states with anti-REAL ID laws, as well as for residents of other states that could refuse to implement REAL ID. The more than 40 million people living in those 12 states would be unable to use their driver's licenses for official purposes such as boarding an airplane, even though no state will have issued a REAL ID-compliant document by that time.

In order to solve the problems of REAL ID, it is imperative that this Committee, and Congress as a whole, heed the call of Governors and law enforcement to enact the PASS ID Act promptly.

Why We Need Secure Identification

The ability to obtain fraudulent identification documents presents an opportunity for terrorists and other violent criminals to board airplanes, rent cars, open bank accounts, or conduct other activities without being detected. Law enforcement must be able to rely on government-issued identification documents. An officer must be able to know that the bearer of a government-issued ID is who he or she claims to be, and must have the ability to identify a fraudulent ID quickly.

We need nationwide standards because states vary widely in how they issue driver's licenses and non-driver's license identification cards produced by states' motor vehicle departments, the two types of identification to which both REAL ID and PASS ID apply. (For shorthand, when I refer to "driver's licenses" in this testimony, I mean both of those types of identification.) Nationwide security standards for IDs would give law enforcement officials the assurance that all IDs meet a high threshold of security. While fraudulent IDs play a major role in identity theft, illegal employment, and border crime, the most immediate reason we need to secure government-issued IDs is to thwart potential terrorists.

As you know, the ability of terrorists to obtain government-issued IDs played a significant role in the events leading to the attacks of September 11, 2001. According to the 9/11 Commission Report, "All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud."² Preventing terrorists from obtaining these documents is critical to securing America against terrorism. As the 9/11 Commission noted, "For terrorists, travel documents are as important as weapons."³

The 9/11 Commission recommended that the federal government work with other layers of government to solidify the security of government-issued IDs:

Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as

² 9/11 Commission Report, p. 390

³ 9/11 Commission Report, p. 384.

drivers licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.⁴

Improving government-issued IDs alone will not thwart every planned terrorist attack, but it presents an important obstacle to any potential terrorist operating in the United States and could aid law enforcement in stopping terrorist plots. Securing IDs is a common-sense national security imperative. The 9/11 Commission spelled out the need for the federal government and the states to take action together on this issue – a process that has been unduly hampered by the REAL ID Act.

Problems with the REAL ID Act

From the perspective of DHS, the major problem with REAL ID is that it is producing very little progress in terms of securing driver's licenses, and it is not getting us to where we need to be. Simply put, REAL ID is unrealistic. It presents major concerns to the states on a number of fronts, and when 12 states have so far outlawed themselves implementing REAL ID, there will never be effective national standards for identification until REAL ID is fixed.

Inflexible electronic verification requirements

A necessary part of increasing ID security is setting strong standards that states would need to meet in verifying the underlying documents a person presents when applying for a driver's license (for example, a birth certificate or driver's license from another state). REAL ID would require states to adopt new technologies in order to verify all those "identity source" documents electronically, including documents issued by other states.

This mandate is too rigid. Many of the required databases are simply not ready – and this requirement provides states little leeway to try to adopt more efficient and effective methods for data verification. Under REAL ID, the states would need to spend an estimated \$1.5 billion to electronically verify applicants' information and to upgrade their systems. States have bristled at being required to absorb this expense when they could take equally effective measures at less cost.

Inflexible re-enrollment system

Similarly, the process by which current driver's license holders renew their driver's licenses, presenting their source documents to enroll secure ID, is a critical part of any ID security initiative. But REAL ID issues inflexible mandates to the states on this score.

Current regulations impose a specific schedule for the states to re-enroll their 245 million driver's license holders. Under REAL ID, re-enrollment would need to be completed in a six-year window, from May 11, 2011 until December 1, 2017. The rule then requires that those under the age of 50 – about 60 percent of all license holders – re-enroll in the first three years of that window, by December 1, 2014.⁵

⁴ 9/11 Commission Report, p. 390.

⁵ Neither REAL ID nor PASS ID would require an individual to re-enroll if he or she does not want a compliant driver's license or non-driver's license ID, but that person would not be able to use a non-compliant driver's license or other non-compliant ID for official purposes.

So long as the Nation reaches the same goal, states should be allowed to find the most efficient and effective ways of expeditiously bringing their residents into a secure ID program based on their own renewal cycles and operations, rather than being forced to follow a rigid age-based plan. PASS ID, if enacted this year, would have states complete issuance by 2016, one year earlier than the current REAL ID schedule, but states retain the authority to meet that deadline as they see fit.

Higher costs than necessary

REAL ID would require an estimated \$3.96 billion for states to implement, yet minimal funds have been appropriated to the states for this purpose. When REAL ID passed in 2005, the states balked at accepting a mandate they had played no part in creating. Today, this hefty burden is made even more onerous by the economic conditions that are constricting state budgets.

Enhancing ID security by setting nationwide standards will be more expensive than the current system – there's no question about it. But in specifically requiring how states meet security standards, rather than having states meet standards in the ways they deem most effective and efficient, REAL ID makes strong security standards more costly than they need to be. Mandating electronic verification or a specific re-enrollment schedule are examples of this.

No incentive to innovate

As is clear, the rigid mandates in the REAL ID Act provide states with little leeway to devise new or better systems to achieve the same security standards. Ideally, states would not merely meet security standards, but also exceed them, and accomplish this in new and better ways. States are laboratories for innovation in government and are best positioned to implement policies according to their operational considerations. Provided the states are on the path to meeting the same strong ID security standards, the federal government should allow flexibility in the means they choose to get there.

Inadequate privacy protections

Several provisions of REAL ID have raised substantial privacy concerns among citizens and state lawmakers. Specifically, REAL ID calls for states to provide electronic access to information contained in their motor vehicle databases to all other states. It is completely unclear how the law envisions this access to be used, much less monitored and managed to ensure privacy protections. Uncertainty about this provision has led to assumptions that REAL ID allows officials of any state to view an applicant's personally identifiable information as part of a national system.

REAL ID lacks sufficient rules regarding who could access, share, or even sell personal information contained in the machine-readable barcode on a REAL ID-compliant document. The current law also lacks protections or procedures for individuals who want to change their data or correct erroneous data in records databases.

Costs of inaction

It is essential for Congress to act promptly to address concerns raised by REAL ID because not changing the law could result in major complications, especially for the residents of the 12 states with anti-REAL ID laws on the books. Due to the concerns

raised by states during the REAL ID rulemaking process, the Department has allowed for various extensions related to compliance. On March 1, 2007, the Department announced it would grant extensions to all states requesting extensions, not to exceed December 31, 2009. The Department has also announced that a second extension is available, but only to those states that have met certain benchmarks by December 31. These benchmarks include a certification by the state that it will comply with REAL ID.

Clearly, this is very problematic for states with anti-REAL ID laws and resolutions. In the 12 states with laws against REAL ID, the December 31 deadline means that residents of these states – who number more than 40 million – will not be able to use their driver's licenses for official purposes, such as boarding aircraft. The residents of Georgia and Virginia may also be affected by their states' less-conclusive anti-REAL ID laws. Eleven other states have passed legislative resolutions opposing REAL ID and could be affected. Together, all these states have 111 million residents, including more than 84 million adults, who could be affected by this deadline.

All in all, half the states have taken some kind of legislative stand against REAL ID and more have expressed serious reservations. Due to the significant budget problems facing all states, it is highly likely other states will also refuse to implement REAL ID. And, under REAL ID, residents of states that have indicated they will comply will be allowed to use their driver's licenses for boarding aircraft and other official purposes, despite the fact that their licenses may be no more secure than those issued by states that have refused to comply. This is because no state – including those without anti-REAL ID laws – will issue REAL IDs by the end of the year. Which driver's licenses are accepted and which are not would be based on a promise of future action, rather than on actual security differences between those driver's licenses. Such a situation would not advance our security, and underscores the need of Congress to act quickly.

The bottom line is that because of the states' objections to REAL ID, today – four years since its passage, five years after the 9/11 Commission Report, and nearly eight years after 9/11 – the United States has not realized secure identification. There has got to be a better way – and that is why I support the approach in PASS ID.

PASS ID: A Workable Model for Security Standards

The PASS ID Act establishes the ID security standards the Nation needs while fixing the problems of the REAL ID Act. A few individuals have responded to criticism of REAL ID by suggesting that any change in the law would weaken the standards it established. Such a criticism is just wrong. Strong security standards for driver's licenses remain the same in the two laws. The two laws are different only in that PASS ID is more nimble and provides a feasible way to achieve ID security. The changes PASS ID makes in directing how security standards are to be implemented are enough to bring the states on board and leave behind a status quo where the Nation has not made sufficient progress on secure identification.

Key similarities in PASS ID: Strong security standards called for by the 9/11 Commission

PASS ID will implement the recommendation of the 9/11 Commission that the federal government provide standards for the issuance of secure identification documents.

PASS ID would provide standards in fulfilling that recommendation that are just as strong as those in REAL ID.

- *Document verification* – PASS ID would maintain strong standards for ensuring the authenticity of identity source documents applicants show to obtain a driver's license. States would be required to have sufficient processes in place to determine the authenticity of documents, including birth certificates or IDs issued by other states. PASS ID would require electronic verification through two federal databases that are used today – SSOLV for social security numbers and SAVE for immigration status.
- *Physical security of ID production* – PASS ID would require states to ensure the physical security of the means of driver's license production, and to conduct background checks on employees who deal with driver's license issuance, in order to reduce the chance of malfeasance and fraud. PASS ID would also require all such employees to be trained in fraudulent document detection. These standards remain unchanged from REAL ID.
- *Photographs of ID applicants* – PASS ID would necessitate that states capture photographs of individuals who apply for a PASS ID-compliant driver's license, including those who are denied, clarifying a provision of REAL ID that states had said was unclear.
- *Requirements to show PASS IDs* – As under REAL ID, non-secure driver's licenses would no longer be accepted at the end of the PASS ID implementation period in order to enter nuclear power plants; federal facilities dealing with national security, homeland security, or defense; and to board airplanes.⁶ PASS ID would not extend to federal locations where REAL ID could potentially have been applied but are openly accessible to the public, such as national parks.

All in all, PASS ID would match the security provided in REAL ID, while providing the states with more flexibility to innovate and meet the standards.

Key differences in PASS ID: Fixes problems in implementation, cost, and privacy

In addition to providing for security standards matching those of REAL ID, PASS ID provides a framework that is more workable from the state perspective.

- *Document verification* – PASS ID would require states to have adequate means of validating the underlying documents of a state-issued driver's license. But unlike REAL ID, PASS ID would provide options to the states to make these determinations. While REAL ID mandates electronic verification for all source document information, PASS ID would maintain a focus on ensuring the authenticity of identity source documents that applicants present, allowing states to adopt cost-effective ways to achieve or exceed that threshold. This provision eliminates the need for every state to adopt expensive and unnecessary

⁶ Under PASS ID – the same as under REAL ID – a traveler who does not have a qualifying government-issued ID will be subject to greater scrutiny as Transportation Security Officers (TSO) determine his or her identity and confirm that the passenger is not on the Terrorist Screening Center's watchlist. TSOs deal every day with travelers who have lost their identification or been victims of theft while on a trip. TSOs make an appropriate decision based on an assessment of available identification that a passenger may carry, or information that the passenger can provide.

technologies. DHS will continue to work with interested states in developing voluntary electronic verification capabilities, through a demonstration project that will help determine whether state-to-state electronic verification can become accurate and workable, and do so with the necessary privacy and security protections built in. Again, the flexibility of PASS ID allows us to proceed with national standards.

- *Lower potential costs* – Greater flexibility in several areas would substantially lower the potential cost to the states for implementing the program. These changes produce cost estimates for PASS ID significantly less than those for REAL ID, though the exact cost would depend on the particular systems states decide to adopt. The bill would also codify the current Driver's License Security Grant Program and specify that the funding is meant for PASS ID compliance, with \$50 million requested in the FY 2010 President's Budget Request.
- *Faster implementation and flexibility* – PASS ID could take effect faster than the current REAL ID schedule. States would have one year after the issuance of final DHS regulations to begin issuing compliant documents, and would have five years from that date to enroll driver's license holders as they see fit. The REAL ID deadline for completing issuance of compliant driver's licenses is December 2017. If Congress enacts the PASS ID Act as it is currently written by October 2009, states could complete enrollment by July 2016, a full one year and five months ahead of the REAL ID timetable. This is part of why taking action on PASS ID is urgent.
- *Privacy protections* – PASS ID would not require states to provide direct access to each other's driver's license databases; in fact, the bill contains protections against creating any national identity database containing all driver's license information and requires states to adopt adequate procedures to prevent unauthorized access to or sharing of personally identifiable information. PASS ID would also require public notice of privacy policies enacted under the law. The bill would establish a redress process for individuals who believe their personal information should be amended in records systems. Moreover, it would restrict private entities from selling or trading the personal information contained in the barcode of a PASS ID-compliant driver's license, and would prohibit private entities from scanning that portion unless it was specifically to support federal, state or local laws (such as purchasing a controlled substance or a weapon).

I want to emphasize that PASS ID accommodates any states that have already taken steps toward secure IDs under REAL ID. Despite the many problems of REAL ID, some states have made significant progress in the past four years on a number of fronts, including digitizing their records. PASS ID would not penalize these states and would allow states to keep either electronic or paper copies of their records. The states that have begun the process of digitization are already ahead of the game – digital records will certainly prove their worth in the long run. PASS ID is specifically designed not to penalize any states that made security advances under current law, but rather to allow states that have laws refusing to implement REAL ID to come back to the table.

All in all, PASS ID is the fix for REAL ID that the Nation needs: one that keeps strong security standards that are critical to our safety, but provides workable ways to

achieve those standards. The states have embraced the changes included in PASS ID, which provides the Nation the opportunity to make real progress on ID security.

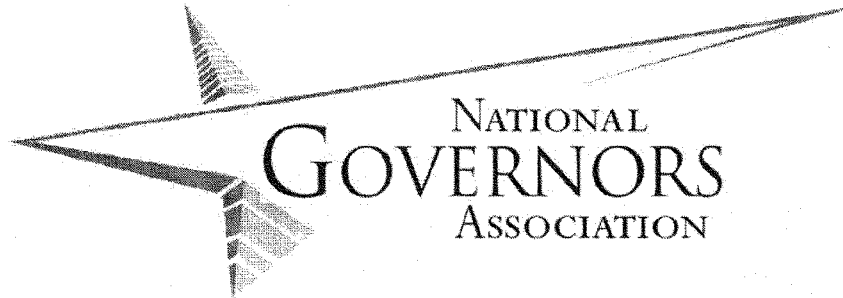
Conclusion

As the 9/11 Commission expressed clearly and specifically, the need to advance ID security across the Nation is urgent. Today, nearly five years after that Commission recommended that ID security reforms begin in the United States, we have made little progress. The REAL ID Act, though well-intentioned, has caused a stalemate on an issue where we cannot afford to wait any longer.

It's time to break this impasse – and the approach taken under the PASS ID Act does just that. PASS ID improves upon REAL ID by maintaining high security standards while providing greater flexibility, reducing cost, accelerating implementation, protecting privacy, and promoting collaboration between the federal government and the states.

This is why PASS ID has a bipartisan and geographically diverse group of sponsors, has won support from the bipartisan National Governors Association, and has received the endorsement of the National Sheriffs Association, the Federal Law Enforcement Officers Association, and the Major Cities Chiefs Association. With the right legislation, working in partnership with law enforcement and the states, we can and will make progress on this important security issue.

Chairman Lieberman, Senator Collins, and members of the Committee: I urge you to join the Department of Homeland Security and our partners to support the approach taken under PASS ID. The time to act is now, given the deadlines involved, and we will continue working with you to address the specific language of the bill as it moves forward. Thank you for your continued partnership and for the opportunity to testify today. I can now answer any questions you have.



Statement of Governor Jim Douglas

Before the Committee on Homeland Security and Governmental Affairs

United States Senate

"Identification Security: Reevaluating the Real ID Act"

July 15, 2009

Chairman Lieberman, Ranking Member Collins and distinguished members of the committee, my name is Jim Douglas, Governor of the state of Vermont and Vice Chair of the National Governors Association (NGA). I appreciate the opportunity to appear before you today to discuss the issues surrounding state implementation of REAL ID and to lend my support for the solutions presented by S. 1261, the "Providing for Additional Security in States' Identification Act of 2009" or PASS ID.

OVERVIEW:

As governor, I am committed to providing my citizens with a driver's license that is accurate and secure. In fact, having repeatedly discussed REAL ID with my fellow governors over the past several years, I can assure you that all governors share common principles regarding licenses and state identification:

- Licenses and identification cards should accurately reflect the identity of their owner;
- The systems that produce the cards and the cards themselves must be secure;
- Information received about individuals should be protected to ensure their privacy; and
- Services and products should be provided in a cost-effective manner that maximizes value for taxpayers without diminishing the security or integrity of the license.

It is through this lens that governors tend to view federal efforts to regulate state licenses such as REAL ID and PASS ID. In reviewing these measures, I've concluded that while the objectives of REAL ID are laudable, the law represents an unworkable and unfunded mandate that fails to make us more secure. In contrast, PASS ID builds on the strengths of REAL ID, resolves REAL ID's weaknesses and delivers more cost-effective, common-sense solutions that can enhance the security and integrity of all driver licenses and state identification cards.

BACKGROUND:

Congress passed the REAL ID Act (REAL ID) as part of the Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief Act (P.L. 109-13). The law replaced section 7212 of the Intelligence Reform Act (P.L. 108-458), which established a negotiated rule making to determine national standards for state driver's license and identification cards (DL/IDs). NGA supported the compromise contained in section 7212 because it allowed stakeholders, including governors, to participate in the process of reforming what traditionally has been a state function.

Although the negotiated rule making was already underway, REAL ID repealed the provision and replaced it with statutory standards, procedures and requirements that must be met if state-issued licenses and identification cards are to be accepted as valid identification by the federal government. REAL ID's mandates require alteration of long-standing state laws, regulations and practices governing the qualifications for and the production and issuance of licenses in every state. Complying with REAL ID's standards will require significant investments by states and the federal government and will test the resolve of citizens who will be directly affected by changes to state systems.

More importantly, all of this must be done quickly. The next milestone for states is December 31 of this year. As of that date, a state must be "materially compliant" with the act or individuals can no longer use its licenses or identification cards to board commercial aircraft.

Given its impact on states and individuals, governors worked closely with other state groups including the National Conference of State Legislatures and the American Association of Motor Vehicle Administrators to recommend a regulatory framework that could bridge the gap between state laws and practices and the unrealistic requirements of REAL ID. I commend the Department of Homeland Security (DHS) and members of this committee like Senator Collins for their efforts to develop a workable regulatory system to implement the law.

Unfortunately, even after the final rule was released, major issues remained, including a lack of funding for state implementation; privacy concerns regarding the collection and use of individuals' information; and uncertainty regarding the availability, development and cost of electronic databases. These concerns ultimately helped propel 12 states to pass laws prohibiting compliance with REAL ID and another 9 states to pass joint resolutions calling for its repeal.

DEVELOPING A SOLUTION

Given states' ongoing concerns, and the looming deadline for material compliance, governors last year asked NGA to work with state experts to fashion a solution to REAL ID based on the following principles:

1. Fulfill the 9/11 Commission recommendation for the "federal government to set standards for sources of identification";
2. Facilitate and encourage participation by all jurisdictions;
3. Enhance the security and integrity of all license and ID cards while retaining state flexibility to innovate; and
4. Address critical privacy concerns and reduce unnecessary costs.

NGA's work culminated in the following recommendations, which governors adopted in February:

- **Provide funds necessary for states to comply with federal requirements.** The projected costs of complying with the act far outweigh existing sources of funding. To the extent federal requirements result in increased costs for states, the federal government should fund the cost of complying with the law.
- **Allow for date-forward implementation.** In order to comply with the act, states should only be required to issue compliant DL/IDs beginning on a certain date. All DL/IDs issued after that date would comply with the federal law, but individuals would not be required to obtain a new DL/ID until their existing DL/ID expires. This provision would not apply to non-federally compliant DL/IDs issued by a state.
- **Limit required electronic verification of documents.** The final rule identifies five systems states will be required to use in order to be in compliance with the law: Social Security On-Line Verification (SSOLV); Electronic Verification of Vital Events Records (EVVER); Systematic Alien Verification for Entitlements (SAVE); an all-drivers system run by the states to ensure an applicant is not licensed in another state; and a system run by the U.S. Department of State to validate foreign passport information. Of these

systems, only SSOLV and SAVE are nationally deployed and functioning. Due to uncertainty regarding how and whether the five electronic systems will work, how they will be integrated, and how they will ensure the protection of data, their use should not be required by federal law or regulation. Rather, states should be permitted to use existing verification processes to comply with federal requirements.

- **Establish a unique symbol to indicate that a license or identification card complies with federal requirements.** States should retain the authority to issue DL/IDs that do not meet federal standards. In order to differentiate between DL/IDs that meet federal requirements and those that do not, DHS should work with states to designate a means to easily identify federally compliant DL/IDs.
- **Provide greater clarification and flexibility regarding physical security requirements.** Not all departments of motor vehicles issue DL/IDs through the same process; some use central issuance (CI), others use over-the-counter issuance (OTC) and some use a hybrid CI/OTC process. Therefore, DHS should allow states to utilize a combination of security features designed to protect the physical integrity of DL/IDs. Many states have processes in place to issue, maintain, and protect DL/ID information. Federal law and accompanying regulations should provide flexibility in how states prevent tampering, counterfeiting, or unauthorized duplication of DL/IDs for fraudulent purposes.
- **Establish minimum guidelines for the further protection of personally identifiable information.** DL/ID information is protected by federal and state Driver Privacy Protection Acts (collectively, DPPA). However, since the federal DPPA was enacted well before REAL ID, DHS should establish further minimum guidelines to address requirements to protect the security, confidentiality, and integrity of personally identifiable information that could not have been contemplated at the time of DPPA enactment.
- **Establish a process to allow states greater flexibility in validating an applicant's identity under exceptional circumstances.** States should be permitted to establish a process to validate an applicant's identity in rare cases where the applicant is unable to present the documents specified in the act.
- **Recognize enhanced driver's licenses as being compliant with REAL ID.** Enhanced driver's licenses issued by states should be considered compliant with requirements for secure state DL/IDs.
- **Establish a demonstration program to evaluate electronic information sharing among states.** The hub system envisioned by DHS in the final REAL ID rule is a complex and potentially costly endeavor and participation in the system should not be federally required. Instead, the federal government should facilitate a demonstration program among a few states to determine projected costs for such a system, the appropriate governance structure for administrative purposes, and the appropriate security and privacy measures to protect individuals' personal information.
- **Provide access to federal electronic systems.** Access to any federal electronic systems that states are required to use to comply with the act should be provided free of charge, just as the E-Verify system is made available to employers without cost.

PROVIDING FOR ADDITIONAL SECURITY IN STATES' IDENTIFICATION ACT OF 2009

NGA supports S. 1261 because it is built largely on governors' recommendations for solving the problems inherent to REAL ID. For example, to address the issue of cost, PASS ID eliminates fees associated with the use of existing federally run databases that states must use to issue DL/IDs. It also allows states to innovate to meet security requirements and eliminates the requirement to use electronic verification systems that do not yet exist or are not nationally deployed. These changes combine to cut state costs of compliance with PASS ID to approximately half that of REAL ID.

PASS ID also recognizes that currently only two of the electronic systems states must utilize under REAL ID exist and are nationally deployed: SAVE to verify immigration status and SSOLV to verify social security information. PASS ID would require the use of these systems but eliminate the need to develop costly new data systems that raise significant privacy and fiscal concerns without providing a measurable increase in security. Current work to develop an electronic database to share DL/ID information among states would be continued under a demonstration project. This demonstration project will allow states to examine the privacy, cost and governance issues involved in the development and use of such a system prior to their voluntary participation.

Privacy concerns are addressed by PASS ID by requiring procedures to prevent the unauthorized access to or sharing of information, as well as requiring public notice of privacy policies and the establishment of a redress process for individuals who believe their personal information should be amended in records systems. As discussed above, PASS ID also eliminates the requirement to develop and use new electronic verification systems, a major concern of privacy right advocates.

Finally, PASS ID ties timelines for issuance and full implementation to the completion of final regulations. Although not a true date-forward implementation schedule as called for by NGA, when combined with other enhancements, PASS ID would allow states to begin issuing compliant licenses and IDs faster than called for by REAL ID.

REAL ID VERSUS PASS ID IN VERMONT

In Vermont, we fully understand the need to ensure the integrity and security of the process by which we issue driver license and identification cards. Our state is working toward compliance with the law, but, as enacted, REAL ID poses significant challenges for our state. PASS ID will also require significant changes to our system, but its elimination of unnecessary systems and its cost make it a far better alternative.

One example in which both REAL ID and PASS ID pose a challenge for Vermont is with their requirement to have a photo on the license or ID. Although this provision is already the norm in most states, it actually presents Vermont with a significant challenge. Vermont was the last state to require a mandatory photo driver's license or identification card, and that did not come without a significant battle. Even when the legislation was adopted, local culture demanded that current licensees were "grandfathered" from the photo requirement. As a result, approximately 20 percent of our licensed drivers are still without a photo image on their license or identification

document. Although both REAL ID and PASS ID allow Vermont to continue to issue non-compliant driver's licenses that will not be valid for federal purposes, both laws still place Vermont in the awkward position of having to maintain a dual system in order to maintain its local culture and customs.

PASS ID is superior to REAL ID in terms of practical application and the likelihood of actual implementation. By eliminating the requirement to use national systems to check vital records, foreign passports and connect to all other motor vehicle departments in the country, PASS ID removes fiscal and operational uncertainties and will allow Vermont to issue compliant cards sooner. There exist significant challenges in developing the systems required by REAL ID and even greater doubt that the systems will be ready, reliable and nationally deployed in time for states to begin issuing fully compliant REAL IDs in 2011. In contrast, our state's processes for validating documents like birth certificates and ensuring only one license per driver are rigorous and reliable and PASS ID further underscores the need for our vigilance. Consequently, in Vermont we feel that we can achieve the same level of security called for by REAL ID and do it sooner under PASS ID.

In addition, PASS ID is more cost effective--a key consideration in these difficult fiscal times. The present cost estimate for states to implement REAL ID nationally is \$3.9 billion. In Vermont we estimate it will cost us at least \$20 million, meaningful dollars for a state our size and a severe roadblock to implementation of REAL ID. PASS ID eliminates unnecessary costs like the transaction charges for linking to and using federal systems, and authorizes some of the funding necessary for states to implement this program. These are giant steps towards covering the cost of compliance. In fact the National Governors Association, with the assistance of state stakeholders, estimates that PASS ID would cost approximately \$2 billion, half the cost of REAL ID.

One aspect of PASS ID that we particularly appreciate is the bill's explicit recognition of Enhanced Driver's Licenses (EDL). With Vermont's close ties to the Canadian Province of Quebec, we very much value the importance of having an open, but secure, border. Vermont businesses both retain jobs and grow because of opportunities to sell products and services to our neighbors to the north. The United States and Canada enjoy the largest bilateral trading relationship in the world, with more than \$1.3 billion in goods and services crossing the border every day. In today's economic climate, a free and open border for Vermont manufacturers and retail businesses is more crucial than ever.

Earlier this year, Vermont began issuing EDLs that are valid land and sea border crossing documents under the Western Hemisphere Travel Initiative. The process to obtain an EDL is far more involved than a regular license; it includes:

- additional proofs of identity
- proof of citizenship
- one-on-one interviews with trained DMV security staff
- a requirement that issuing staff have undergone FBI background checks and must be US citizens
- a requirement that licenses be produced in a secure factory and mailed to customers

- a requirement that licenses contain Machine Readable Zones (MRZ) and Radio Frequency Identification (RFID) tags

The importance of Vermont's EDL being recognized as compliant with federal driver's license standards cannot be understated as Vermont's economic, environmental and cultural relationship with Quebec is of paramount importance. The EDL cost Vermont about \$1 million to implement, but more importantly the ease of border travel it creates is key to our economy and our relationship with Canada, Vermont's largest trading partner.

If the Vermont EDL were not recognized as REAL ID compliant, citizens would be faced with a difficult choice – either carry an EDL for land border crossings to Quebec or carry a REAL ID compliant card for flying and/or accessing federal buildings. If Vermont's EDL is not compliant, it would become essentially useless as most customers would be better off obtaining a regular license and also maintaining a passport or passport card for border travel.

CONCLUSION:

Since its passage, governors have consistently offered constructive recommendations for implementing REAL ID. Governors have encouraged DHS and Congress to "fix" the act by implementing statutory or regulatory changes to make REAL ID feasible and cost-effective. They also have called on the federal government to "fund" REAL ID by providing federal dollars to offset state expenditures for meeting new federal standards.

PASS ID represents the type of commonsense solution governors have long sought. Governors support PASS ID because security of our nation is not a partisan issue. Every governor is a security governor. Every governor is interested in making government work. PASS ID represents a workable, cost-effective solution that can increase the security and integrity of all state license and identification systems.

On behalf of the National Governors Association, I would like to express governors' strong support for S. 1261 and encourage this committee to take up the legislation and report it favorably to the Senate as soon as possible.

Testimony of
Stewart Baker
Before the
Committee on Homeland Security and Governmental Affairs:
“Identification Security: Reevaluating the Real ID Act”
United States Senate

July 15, 2009

Chairman Lieberman, Ranking Member Collins, and distinguished members of this Committee, I am pleased to appear before you today to discuss the importance of REAL ID to our physical and economic security.

I. Dangers of Insecure Identification

In this country, the document that most people use to identify themselves is not issued by the federal government and was not originally intended as an identity document. State driver's licenses were originally designed to verify that the holder had passed a driving test and was allowed to drive. But over the years, they have become the primary identification document for almost everyone over the age of sixteen. They are used to buy liquor and cigarettes, to enter federal buildings, to board airplanes, and to cash checks.

Our reliance on licenses issued by fifty-six jurisdictions to prove identity creates special problems. It means that there are fifty-six different standards and fifty-six different notions of how much security should be built into the document and the issuance process, based on fifty-six different state and territory budgets and policies. Given the ease with which people travel interstate, it is all too easy for criminals and terrorists to exploit security holes in the weakest state license procedures.

9/11 brought this lesson to life. At least six of the hijackers used state-issued identification cards to check in at the airport on the morning of 9/11, many of them obtained fraudulently. Among them, the hijackers possessed thirty different identification documents, and some possessed identifications from multiple states.

Timothy McVeigh also took advantage of insecure identification procedures. In 1995, he was able to create a fake South Dakota license with ease; all it took was a manual typewriter and a kitchen iron. He used the license to rent a Ryder truck in Oklahoma and destroy the Murrah Federal Building.

Terrorist attacks are not the only dangers of insecure identification. False identification documents have enabled the millions of instances of identity theft that occur every year. Identity thieves use other people's personal information to obtain driver's licenses and other forms of

identification. Then they use the identification to take actions, like obtain medical treatment and open bank accounts, in other people's names.

The 9/11 Commission concluded, "For terrorists, travel documents are as important as weapons."¹ The Commission emphasized the dangers that result from insecure identification: "Fraud in identification is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."² The Commission's recommendation was equally direct: "The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses."³

REAL ID puts the recommendations of the 9/11 Commission into law. By requiring protections such as allowing state Departments of Motor Vehicles (DMVs) to check the records of other state DMVs, verifying the documents like birth certificates and social security cards that people use to get licenses, and prohibiting people from using insecure identifications to board airplanes or enter federal buildings, REAL ID keeps us safe.

II. Strengths of REAL ID

A. REAL ID Protects Our Privacy

Critics claim that REAL ID is a threat to privacy. This is false.

The claim that REAL ID threatens privacy has helped to stall driver's license security. But the result of the delay is not more privacy. It is less. People whose identities have been stolen with the help of a fake or fraudulent driver's license are victims of the delay—indeed, they are victims of the "privacy" advocates who have campaigned against REAL ID.

They've suffered real losses, and a real invasion of their privacy, because people who claim to speak for privacy have been fighting to prevent good driver's license security.

Repealing or gutting the requirements of REAL ID will create hundreds of thousands more privacy victims over the next few years. A substantial number of identity thieves have used fake driver's licenses to commit their crimes, and making licenses harder to forge will make this crime harder to perpetrate. By requiring verification of documents such as birth certificates, REAL ID will make it harder for criminals to forge documents that allow them to obtain identifications. Additionally, the three kinds of security features that REAL ID requires on every card will make it harder for criminals to forge the identifications themselves.

I have yet to hear a coherent explanation of the claim that REAL ID is bad for privacy. Surely privacy is not improved by a bad identification system. The closest thing to a coherent

¹ The 9/11 Commission Report, p. 384.

² Id. at 390.

³ Id.

argument is based on the false claim that REAL ID would create a national database of individuals' personal information. Under REAL ID, state DMVs, not the federal government, will continue to control driver's license data. REAL ID simply allows state DMVs to access the databases of other state DMVs—something that law enforcement officials can do now every time they perform a traffic stop. No additional databases are created and there is no aggregation of personal data.

Moreover, thanks to REAL ID, that data will get additional protection from disclosure. State DMVs will have to meet tough new security standards for that data. Among other measures, states will have to ensure the physical security of facilities used to create identification documents and store personal information, perform background checks on employees involved in the manufacture of REAL ID identifications, and formulate emergency response plans.

REAL ID does not create a national identification card. States will continue to issue identifications, and no one is required to have one of these cards. If anything, REAL ID eliminates the need for a national identity card because individuals will have secure state-issued identification.

B. REAL ID is an Affordable Protection

The importance of secure identification cannot be overstated. Many would argue that we should spend whatever it takes to ensure that individuals in this country have secure identification. Fortunately, the cost of REAL ID measures is not that high, especially when compared to the cost of the system already in place.

The federal government has provided states with grants for REAL ID implementation and modified compliance requirements. When it announced the final REAL ID regulations in January 2008, the federal government made \$360 million available to states—\$80 million in dedicated REAL ID grants and \$280 million in general homeland security funding. It also cut the amount that states would have to spend by almost three-quarters by extending the enrollment deadline. Originally states would have to produce compliant identifications for all driver's licenses by 2013. But federal regulators included phase-in requirements in the REAL ID regulations that allowed states to first become compliant with licenses of those under fifty years old by 2014, and those over fifty years old by 2017. Since REAL ID regulations came into effect in January 2008, the federal government has made even more grant money available to states. Some of this money, such as the nearly \$50 million that former Secretary of Homeland Security Michael Chertoff released in December 2008, remains unspent.

The federal government has provided and continues to provide substantial financial assistance to states implementing these important protections. No matter the exact cost of REAL ID implementation—which DHS estimated in January 2008 to be just \$8.30 per person—it outweighs the high costs of terrorist attacks and identity theft.

III. Changes that Must be Made to PASS ID

As currently written, PASS ID gives us a false sense of security: it returns us to pre-9/11 standards for the issuance of identification documents while leading us to believe that these documents are secure and enabling us to do more with these documents. There are no easy solutions to the problem of secure identification, but if legislators are intent on replacing REAL ID with PASS ID, there are several changes that must be made. Below, I have identified PASS ID's greatest weaknesses and suggested ways to fix them.

A. PASS ID Must Require Breeder Document Checks

1. PASS ID Problems

Eighteen of the nineteen 9/11 hijackers obtained government-issued identification in the U.S. They used these documents to rent cars, lease apartments, open bank accounts, and board airplanes. The problem was not that the identifications themselves were forged. The identifications were valid, but many were based on false documents. To prevent this from happening, REAL ID requires states to verify the validity of birth certificates and other breeder documents that individuals use to obtain identifications. PASS ID does not.

There is no point in having hard-to-forge licenses if they can be obtained simply by showing other documents that are easily forged. The U.S. Government Accountability Office (GAO) released a report in March detailing how a GAO inspector was able to obtain four passports, each time using a counterfeit birth certificate.⁴ The report noted that one reason that the inspector was able to get the passports was because the Department of State could not conduct real-time verification of the birth certificates. Instead, government officials responsible for verifying the validity of the documents did so only by inspecting them. That's what state DMVs have to do now. And if the State Department cannot figure out which birth certificates are forged, how do we expect DMV clerks to do better? Social security cards are similarly insecure. Imposters can easily forge our social security cards, and, as a recent Carnegie Mellon study reports, individuals' social security numbers can be guessed with remarkable accuracy.⁵

2. Solutions

It is relatively inexpensive to perform breeder document checks, and several states are already performing them. One electronic verification system approved under REAL ID, Electronic Verification of Vital Events (EVVE), is up and running in fifteen states, and five more states will be using EVVE by the end of 2009. EVVE would allow every state DMV to electronically verify the birth certificates of applicants for driver's licenses and identifications, even those of applicants from different states. Officials enter a query into the EVVE database, and seconds later receive a response stating whether the birth certificate is valid or not. The electronic verification is secure and accurate. All confidential information is encrypted, and all

⁴ U.S. Gov't Accountability Office, Dept. of State, GAO-09-447, *Undercover Tests Reveal Significant Vulnerabilities in State's Passport Issuance Process* (2009).

⁵ *Researchers: Social Security Numbers can be Guessed*, *Wash. Post*, July 7, 2009, at A2.

personal information remains in state databases, not in a centralized database. Three state DMVs currently use EVVE to verify birth records.

EVVE is an inexpensive system to operate. A recent DHS grant of \$4 million is enough to install EVVE capability in all fifty states by May 2011, add a batch process to make the system more efficient, and perform an independent security check on the system. Digitizing state records will add to the cost, but all remaining birth records could probably be digitized for less than \$100 million. After these start-up costs, EVVE will be even less expensive. Each query will cost just pennies, and because it will take seconds, instead of the days that it takes to perform a paper query, will save uncalculated other costs.

Other government offices recognize the benefits of EVVE. The U.S. Office of Personnel Management uses EVVE to verify vital records, as do several state Medicaid offices and departments of health. All 1,500 Social Security Administration offices are using EVVE and are finding benefits even though just fifteen states have EVVE up and running. These offices recognize that EVVE can cut down on fraud in areas of regulation beyond the issuance of identifications.

There are other inexpensive and easy-to-use systems already in place that can allow for the verification of breeder documents. There is currently an agreement in place between DHS and the State Department that allows DHS to check individuals' passport records and verify the identity of the person presenting the passport. This system is used at our country's borders every day, and about 130,000 employers use it when hiring individuals to make sure that they are eligible to work in the United States. It is not an expensive or difficult process—any employer with access to the internet can perform these checks. It would not be difficult for fifty more entities to use this system.

The language of PASS ID should be changed to require breeder document checks. Suggested language is attached at "Attachment 1."

B. PASS ID Should Not Contain a "No Identification Needed" Clause

1. PASS ID Problems

The PASS ID bill states that "no person shall be denied boarding a commercial aircraft solely on the basis of failure to present a driver's license or identification card issued pursuant to [PASS ID]." This clause threatens passenger safety and will create endless legal headaches.

Currently, as a matter of policy, the Transportation Security Administration shows flexibility in deciding whether passengers may board airplanes without identification. If passengers forget their identification, do not have identification, or refuse to present identification, they will be subjected to additional screening measures, but they may still be allowed to board if TSA is satisfied that they do not present a security risk.

There is a big difference, however, between implementing this practice through TSA policy, as TSA does currently, and creating a rigid statutory right, as PASS ID proposes.

The inclusion of this clause in PASS ID will not simply ratify TSA's current policy. Instead it will encourage privacy groups and others to launch litigation designed to overturn TSA's current policy. Every word of the provision will be scrutinized, and the courts are bound to have surprises for TSA. For example, suppose TSA officials spend so long interrogating the ID-less passenger that he misses his flight. Has the passenger been "denied boarding a commercial aircraft solely" because he didn't have ID? If he'd had ID, he would have caught the flight, so that's not an implausible reading, but it would allow passengers without ID to cut off follow-up questions just by saying that their flight was leaving.

Second, what does it mean to deny boarding "solely on the basis of failure to present a driver's license?" The clause invites the courts to decide whether TSA has what the courts consider an adequate reason other than the lack of an ID. That's because judges will be urged to see denial of boarding in these situations as punishment for failure to present identification. But punishing a traveler for exercising a statutory right is not something that the courts are likely to find. To prevent TSA from denying boarding for a bad reason, courts will demand that TSA identify with specificity the reasons a passenger was denied boarding, and then the courts will decide whether those reasons are acceptable.

Let's think about what that will mean in practice. What if the TSA official questions the passenger and is still suspicious about him or her after the questioning? In August 2001, this and not much more is what kept the "twentieth hijacker" out of the country. The border official in Orlando got a "creepy" feeling from Mohammed al-Qahtani and would not let him enter the U.S. If a TSA officer offered the same reasons for not boarding an ID-less passenger, will all courts agree that a lack of ID plus a general suspicion is enough to deny boarding? Or will the courts decide to require even more specificity from TSA as a way of preventing TSA from surreptitiously punishing ID-less travelers?

If they do, and I suspect they will, then TSA will have to protect itself and its staff from judicial second-guessing, so TSA lawyers will end up drafting scripts and giving guidance about which questions and which answers form an acceptable basis for denying boarding. Judgment will go out the window, and checking boxes will be the way security is implemented. Worse, once these scripts become public, and it becomes clear what boxes are being checked, it will be easy for anyone to exploit the predictability in our security system to evade controls.

The US air security system depends on identifying the people who should not be allowed on a plane without careful scrutiny. If the system can be defeated by simply refusing to carry identification, then the system becomes much easier to beat. Why would we want to make it easy to beat the air security system by creating a statutory right to fly without ID? What problem, exactly, is this provision trying to solve?

2. Solutions

There is one problem that the provision may be intended to address. Under REAL ID, TSA arguably didn't have discretion to accept noncompliant licenses. Under that reading, states that did not adopt REAL ID standards might see all of their citizens turned away at the airport,

even if TSA were quite confident of the passengers' identity. I don't think that was a correct reading of the law, but it was not completely implausible. If this Committee wants to remove that problem, though, there is no need to create an open-ended statutory right to fly without ID.

The language of the PASS ID bill could simply be changed to give TSA discretion to determine when passengers should and should not be allowed to board. That would ensure that TSA's current discretion remains part of the security framework.

Alternatively, the provision should be amended to avoid endless litigation by making clear that it does not confer on passengers the right to bring suit but rather is intended simply to give guidance to TSA. Suggested language to this effect is attached at "Attachment 2" at the end of this statement.

C. PASS ID's Nine-Month Deadline for the Passage of Rules is Impossible to Meet

1. PASS ID Problems

PASS ID requires that rules implementing its new requirements be adopted within nine months. All other deadlines in the act are measured from the date on which the regulations take effect. It's a good thing for the authors of PASS ID that the truth in advertising laws don't apply to Congressional bills. Because the deadlines in PASS ID are all phony. We will never get driver's license security on the schedule that PASS ID purports to establish.

PASS ID gives the impression that license security will improve quickly because of the deadlines in the bill. But the bill in fact creates great new incentives and opportunities for delay. By making all security improvements wait until regulations take effect, PASS ID issues an open invitation to everyone who dislikes the bill: "Stall the regs as long as you can; because as long as they haven't been issued, you won't have to do anything at all." Even states that want to comply quickly and that can comply quickly will be slowed down.

It won't take much stalling to blow out the nine-month deadline. In fact, existing law makes it impossible to issue serious rules in nine months. Under existing executive orders, any proposed rules drafted by DHS must be submitted to the Office of Management and Budget (OMB), which may spend 90 days reviewing them. Next, the Administrative Procedure Act and executive orders call for DHS to make the proposed rules available for public comment for 60 days. Once DHS has responded to all of the comments and incorporated the appropriate ones into the final version, DHS must send them back to OMB for 90 days. Finally, DHS must submit the rules to Congress for a 60-day review period before they become final.

If you've been doing the math, you'll see that the numbers don't add up. Or rather, they add up too fast and too high. 90 days for OMB to review proposed rules, plus 60 days for public comments, plus 90 days for OMB to review final rules, plus 60 days for Congressional review—that adds up to ten months. So even if DHS could do all of its drafting in 24 hours, it cannot meet the nine-month deadline.

And there's no way DHS can do its work in anything like 24 hours. Drafting a regulation is plenty of work, but it's just the beginning of the homework that goes into any new regulation. Here's a sample of the other work that has to be completed to issue a regulation:

- Regulatory Flexibility Act (5 U.S.C. §§ 601-612): DHS must assess the impact of its regulations on "small entities" like small businesses and small governmental organizations and prepare "regulatory flexibility analyses" for both the proposed and final rules. If those small entities don't like the analysis, they can sue to stop the reg.
- Unfunded Mandates Reform Act (2 U.S.C. §§ 1501-1571): DHS must prepare several reports, including specific cost estimates for both the proposed and final versions of certain rules affecting state and local governments, plans to notify affected small governments of regulatory requirements, and processes to allow local officials to provide input into the development of regulatory proposals.
- National Environmental Policy Act (42 U.S.C. §§ 4321-4347): DHS must prepare an initial environmental assessment to determine whether the rules will cause a significant impact on the environment, and then prepare a full "environmental impact statement" if it determines that there will be a significant impact.
- Executive Order 13422: DHS must provide an estimate of the regulatory costs and benefits of the proposed rules.
- Executive Order 13132: DHS must develop a process to ensure meaningful input by state and local officials.
- Executive Order 12988: DHS must ensure that it complies with specific requirements to improve regulatory drafting.
- Executive Order 13175: DHS must not promulgate regulations not required by law that have tribal implications unless the agency provides funds or consults with tribal officials.
- DHS must give careful consideration to all of the comments on any proposed rule and explain why it does or does not agree with them. (The original proposed rule for REAL ID attracted 21,000 public comments.)

It will take months to comply with all of these substantive and procedural requirements, and several of them offer opportunities to litigate, a tactic that could force years more delay before we see implementation of the security measures that PASS ID calls for.

How long will it take? Well, it took nearly three years to promulgate rules under REAL ID, and that was with a clear signal from the Secretary that the regulations were a high priority and without litigation. It could easily take five years or more. Under the legislation, DHS would have missed the Congressional mandate by more than four years, and it would be pilloried if any terrorist act in those four years took advantage of existing driver's license security flaws. I do not believe that this Committee, of all committees, should set DHS up to fail so disastrously.

There is no need to wait that long just to get started on the security measures in PASS ID. Particularly since those requirements seem to have been written more or less by applying Microsoft's paragraph-delete function to the existing REAL ID regulations. I've attached to my testimony a chart ("Attachment 3") that shows how closely the substantive requirements of

PASS ID track existing regulations. In fact, it's fair to say that PASS ID simply adopts the first half of REAL ID compliance, originally scheduled to take effect at the end of this year, and drops the rest of REAL ID's requirements. Seventeen of the eighteen REAL ID regulatory benchmarks for this stage of REAL ID (also called material compliance) are also part of PASS ID.⁶

These requirements are not a surprise. The states have been working toward those benchmarks for years. Indeed, when the states accepted federal grant money under REAL ID, they agreed to meet the federal government's deadline for those eighteen benchmarks. That deadline was the end of this year. Are we really going to delay progress on those benchmarks for three to five years just so that a few paragraphs of the Code of Federal Regulation can be reissued?

I hope not. There are two ways to avoid this result. If Congress really wants new regulations and it really wants them issued in nine months, then Congress should waive the host of statutes and executive orders that currently slow the regulatory process.

Alternatively, Congress could simply declare that the existing regulations provide a good start and that many of them will remain in effect until revised. Instead of imposing pointless years of delay, that solution would save nine months, since the states could begin implementing them immediately (something the states have already told DHS they can do). DHS can at the same time modify the regulations as it sees fit and on a reasonable schedule.

2. Solutions

i. Waive the Requirements of the Above Laws and Executive Orders

Waiving the regulatory process laws and Executive Orders set out above would make it feasible for DHS to issue rules within nine months. Without a required comment period and without the various impact statements and OMB review, it's possible that DHS could get a large regulation out in nine months. But I frankly doubt that such a waiver would be politically feasible given the many constituencies that have invested in those procedures.

ii. Leave in Place the Regulations Found at 6 C.F.R. § 37.1 *et seq.*

The more practical and faster option would be to simply leave many of the current rules in place. Most of the rules at 6 C.F.R. § 37.1 *et seq.* are consistent with PASS ID, as shown by Attachment 3. It makes no sense to invalidate rules that have already gone through the entire process described above when PASS ID draws so heavily on those same rules. At the very least, these rules should remain in place until the adoption of new rules.

Proposed language for this option is attached at "Attachment 4."

⁶ Benchmark #10's requirement that the card contain the full legal name of the applicant is inconsistent with PASS ID. The rest of benchmark #10 is consistent with PASS ID.

D. PASS ID Should Impose Conditions on the Grants to be Given to States

1. PASS ID Problems

DHS issues hundreds of millions of dollars to states every year to spend on homeland security efforts. States normally spend this money on items that make their own residents safer, such as fusion centers or equipment for first responders. These are worthwhile expenditures.

But the money the states are spending comes from taxpayers all over the country. Surely, then, it should be spent first on measures that will help make the entire country safer.

Driver's license security is one such measure. Because state driver's licenses are accepted everywhere, weaknesses in one state's ID security put us all at risk, and we should insist that states give the highest priority to expenditures that will close those security gaps.

2. Solutions

Congress should include a provision in PASS ID that requires states to make driver's license and identification security a top priority when spending state homeland security grants. Suggested language can be found at "Attachment 5."

IV. Conclusion

The importance of secure identifications cannot be overstated. Insecure identification documents based on unverified documents themselves enable crimes from terrorism to underage drinking. This truth was highlighted in the 2007 Fort Dix terrorism plot. There, secure identification laws made it possible for federal officials to interrupt the plot. Three of the individuals plotting to attack the fort were in the U.S. illegally, and under a New Jersey law requiring proof of lawful presence to obtain identification documents, they could not obtain identification. Because the men could not buy weapons legally without identification, they were forced to buy them illegally. This provided undercover law enforcement agents with enough evidence to stop the plot, and they interrupted the terrorists' plans.

Nearly all states are implementing elements of REAL ID. About sixteen states publicly support REAL ID and are working towards achieving REAL ID regulations' "material compliance" benchmarks. Other states that did not initially support REAL ID have reversed their position. A good example is Maryland. At the time of REAL ID's passage, Maryland legislators called for a repeal of the Act. By December 2008, however, officials understood the importance of REAL ID and in April, the governor signed legislation that guaranteed REAL ID compliance. Other states have quietly indicated their support of REAL ID. For example, the governor of Oregon signed an executive order in 2007 requiring the state to abide by standards even stricter than those of REAL ID in issuing driver's licenses.

With this steadily growing support of REAL ID and the undeniable truth that secure identifications protect us, REAL ID should not be abandoned. If legislators are intent on amending REAL ID, the recommendations I have described will help to ensure that PASS ID keeps us safe and protects our privacy.

Attachment 1

Proposed language for § 242(c)(3) of PASS ID:

**SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS
FOR FEDERAL RECOGNITION.**

(c) MINIMUM ISSUANCE STANDARDS

...

(3) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures —

(A) Not later than two years from the date of the enactment of this Act a State shall make available to each other State a complete set of electronic birth records, and shall, before issuing a driver's license or identification card to a person, verify the birth record of each person seeking a license by means of these electronic records.

1. States shall where possible prefer U.S. passports for purposes of identification. The State shall perform an online verification of the passport that includes a verification of the person's photograph.

Attachment 2

Proposed language for § 242(a) of PASS ID:

**SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS
FOR FEDERAL RECOGNITION.**

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL—Beginning 1 year after the date on which final regulations are issued to implement this subtitle, pursuant to section 5 of the PASS ID Act—

...

(B) to board a federally regulated commercial aircraft, a person must present identification that the Transportation Security Agency in its sole discretion deems sufficient in the circumstances. Nothing in this subsection shall be construed to create any legally enforceable right.

Attachment 3

PASS ID Section 242: Minimum Document Requirements and Issuance Standards for Federal Recognition	Corresponding REAL ID Regulations
(a) Minimum Standards for Federal Use	6 C.F.R. § 37.1 6 C.F.R. § 37.3 6 C.F.R. § 37.51 6 C.F.R. § 37.55 6 C.F.R. § 37.59 6 C.F.R. § 37.61 6 C.F.R. § 37.63 6 C.F.R. § 37.65
(b) Minimum Document Requirements	6 C.F.R. § 37.3 6 C.F.R. § 37.15 6 C.F.R. § 37.17(b)-(n) 6 C.F.R. § 37.19 6 C.F.R. § 37.71
(c) Minimum Issuance Standards	6 C.F.R. § 37.3 6 C.F.R. § 37.11(a)-(f) 6 C.F.R. § 37.11(i) 6 C.F.R. § 37.21 6 C.F.R. § 37.23 6 C.F.R. § 37.25 6 C.F.R. § 37.27
(d) Other Requirements	6 C.F.R. § 37.3 6 C.F.R. § 37.29(a) 6 C.F.R. § 37.31(b)-(c) 6 C.F.R. § 37.41 6 C.F.R. § 37.43 6 C.F.R. § 37.45

Attachment 4

Proposed language for § 5(a) of PASS ID:

Sec. 5. RULEMAKING

(a) IN GENERAL—Not later than 9 months after the date of the enactment of this Act, the Secretary, after providing notice and an opportunity for public comment, shall issue final regulations to implement subtitle E of title II of the Homeland Security Act of 2002, as added by section 3.

(1) Until and unless superseded by further regulations, the following regulations, except as they relate to timing deadlines, shall implement this Act.

- (A) 6 C.F.R. § 37.1
- (B) 6 C.F.R. § 37.3
- (C) 6 C.F.R. § 37.5
- (D) 6 C.F.R. § 37.11(a)-(f); 6 C.F.R. § 37.11(i)
- (E) 6 C.F.R. § 37.15
- (F) 6 C.F.R. § 37.17(b)-(n)
- (G) 6 C.F.R. § 37.19
- (H) 6 C.F.R. § 37.21
- (I) 6 C.F.R. § 37.23
- (J) 6 C.F.R. § 37.25
- (K) 6 C.F.R. § 27.27
- (L) 6 C.F.R. § 37.29(a)
- (M) 6 C.F.R. § 37.31(b)-(c)
- (N) 6 C.F.R. § 37.41
- (O) 6 C.F.R. § 37.43
- (P) 6 C.F.R. § 37.45
- (Q) 6 C.F.R. Subpart E
- (R) 6 C.F.R. § 37.71

(2) Timing deadlines in the regulations identified in paragraph (1) shall be established by the Secretary of Homeland Security by publication of a notice in the Federal Register .

Attachment 5

Proposed language for § 244 of PASS ID:

SEC. 244. GRANTS TO STATES

...

(c) OTHER GRANTS.—In awarding grants to States designated for homeland security through the Department of Homeland Security's State Homeland Security Program, DHS shall require that improving driver's license and identification security shall be a priority, and in particular shall be prioritized above expenditures that do not improve security on a nationwide basis.

**Testimony before the United States Senate
Committee on Homeland Security and Governmental Affairs
Hearing on "Identification Security: Reevaluating the REAL ID Act"**

**Leroy D. Baca
Sheriff, Los Angeles County, California**

July 15, 2009

Good Morning Chairman Lieberman, Ranking Member Collins, and Members of the Committee. My name is Lee Baca and I currently serve as the Sheriff of Los Angeles County, California and on the Board of Directors of the National Sheriffs' Association (NSA).

I am pleased to have this opportunity to appear before you today to express our support for S. 1261, *The Providing for Additional Security in States' Identification Act of 2009 (PASS ID)*. As the witnesses before me have addressed the problems and challenges associated with the implementation of REAL ID, my testimony will focus on the critical need for a national standard for identification security from a local law enforcement perspective, so that we are effectively integrated to ensure homeland security.

We recognize that the proposal to issue a national standard for identification security has been a contentious issue. However, we believe that PASS ID adequately addresses the cost, policy and privacy concerns so as to protect the citizens that we serve. From a law enforcement perspective, it gives us that much more confidence that the identification we are looking at is authentic – that you are in fact who you say you are. It provides one more tool to ensure public safety. It is designed to make it much

more difficult for terrorists, criminals and illegal aliens to tamper with official identification.

In 2005, the National Sheriffs' Association was asked to take a position on REAL ID. NSA discussed the issue at length and while the Association did not take an official position on the Act itself, we did support the concept of the need to develop a national standard for identification security.

Recognizing the significant problems associated with REAL ID and the looming deadline for full compliance, the NSA Board of Directors reviewed and discussed the provisions of PASS ID and officially endorsed the proposal. In doing so, NSA became the first national law enforcement organization in the United States to endorse this proposal.

Since the events of 9/11, the significance of how local law enforcement might protect national security and the importance to homeland security measures have increased substantially. Sheriffs and their deputies play a critical role in homeland security efforts as the nation's counterterrorism "eyes and ears." Local law enforcement personnel are almost always the first to experience firsthand suspicious activities and first to respond to any terrorist event. Clearly, there is a compelling role for local law enforcement in which we make contributions to preventing and responding to local manifestations of terrorist threats.

We must make communication and integration of federal homeland security efforts with local law enforcement a priority at the policy and operational levels. Information sharing is the mission-critical requirement to achieve homeland security, to protect the American public, and to defend against terrorism. Whether it's an officer at a

traffic stop, an investigator at a crime scene, a first responder at a toxic spill, or an officer at the border, it is vital that we move forward in providing efficient, secure, and accurate identification across jurisdictional and technological boundaries.

NSA believes that PASS ID is a logical solution and currently the only pragmatic approach to implement a national standard for identification security. The core of the PASS ID concept is premised on a practical approach to avoid the systematic malady of REAL ID including cost and privacy concerns.

In light of the 9/11 terrorist attacks and the discovery that its hijackers boarded flights with fraudulent identification and the need for increased border security, it is readily apparent that we need to develop a national standard for identification security on state identification cards and driver's licenses to prevent the ability of forging these documents and obtaining such state identification with fraudulent papers.

We witness daily during the course of our law enforcement duties individuals who are routinely found to have counterfeit identification. While some fraudulent documents are easy for law enforcement to recognize as counterfeit, there are documents that are expertly crafted and almost impossible to detect as counterfeit.

Such documents pose a dangerous risk to not only the law enforcement community, as we become unsure of the identities of individuals we have in our custody, but to the public, as we may release potentially dangerous individuals unknowingly into an unsuspecting public.

Under PASS ID, the requirements necessary for obtaining state identifications and driver's licenses remain as strong as they were with REAL ID. States will be required to validate the identity of an individual by checking several federal government

databases, including the Social Security database, and confirming his or her legal status with federal immigration services.

Thus PASS ID would assist law enforcement in identifying citizenship or legal status of an individual through state identification cards and driver's licenses. Such information is critical to local law enforcement in our border security efforts. In particular, the information will help to identify those individuals who are in the United States illegally, who are dangerous criminals or who could potentially pose a threat to national security.

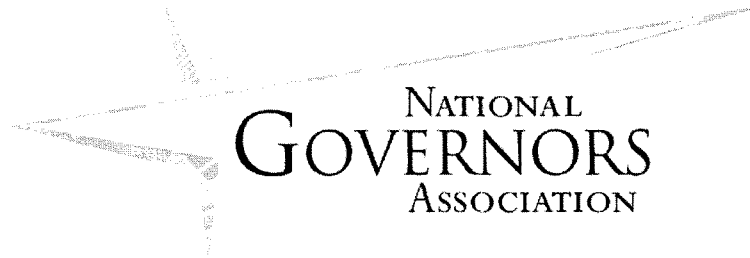
It would mandate that identification cards still contain the requirements from REAL ID, meaning that the cards would display a photo of the individual, the individual's valid signature, and a machine-readable barcode on the back of the license or identification. The bar code would continue to contain the appropriate identification that would already be included on the ID, but presents it in a more readable form for law enforcement and continues to verify that an individual is who he or she claims. PASS ID would, however, prohibit the social security number of an individual from being included within the barcode or on the card itself to ensure that the individual is protected against identity theft.

We are not declaring PASS ID as the end-all perfect solution and anticipate that further technological systems, laws and regulations will likely have to be developed and enforced to improve provisions under PASS ID. However, we believe that PASS ID is a significant and necessary step forward in establishing a much needed national standard for identification security to strengthen homeland security. We must accept that REAL

ID has not and will not be fully realized and that there is an urgent need to implement an alternative security measure as a starting point.

Simply, the implementation of PASS ID would enhance law enforcement's ability to identify and translate critical information to the officer on the street in an effort to ensure America's public safety.

I want to thank you for the opportunity to come before you today and express our support for *S. 1261, The Providing for Additional Security in States' Identification Act of 2009 (PASS ID)*. The National Sheriffs' Association stands ready to assist Congress and the Administration in implementing PASS ID and creating a safer and more secure nation for all individuals.



Statement of David Quam
Director, Federal Relations, National Governors Association
Before the
Committee on Homeland Security and Governmental Affairs
United States Senate

“Identification Security: Reevaluating the Real ID Act”
July 15, 2009

Chairman Lieberman, Ranking Member Collins and distinguished members of the Committee, on behalf of the National Governors Association (NGA), thank you for the opportunity to testify today regarding the PASS ID Act (S. 1261) and how it would enhance the security of all driver's licenses and identification cards.

Overview

The National Governors Association (NGA) is supportive of S. 1261, the Providing for Additional Security in States' Identification Act of 2009 (PASS ID), because it would address the primary concerns that have led 12 states to enact legislation prohibiting implementation of REAL ID and nine others to enact joint resolutions in opposition to REAL ID (see Appendix A). States' opposition stems from three long-standing state concerns: 1) REAL ID is a huge unfunded mandate; 2) the law's reliance on electronic data systems raises significant privacy concerns; and 3) the law is problematic if not impossible to implement.

In contrast to REAL ID, PASS ID was developed in close coordination with states and addresses states' concerns by eliminating unworkable requirements of REAL ID, providing states flexibility to use innovative solution to meet federal requirements, and allowing all states the opportunity to participate in a more secure system for driver's license and identification card (DL/ID) issuance.

With the support of the National Council of State Legislatures (NCSL), the American Association of Motor Vehicle Administrators (AAMVA), and other key law enforcement and technology organizations, PASS ID offers an opportunity to fix a broken system ahead of a looming deadline at the end of this year. Under the REAL ID regulations, states must meet 18 separate requirements in order for their DL/IDs to continue to be accepted for official purposes, such as boarding commercial aircraft. If PASS ID does not move forward before the end of this year, more than one-fifth of states' citizens could find they no longer have proper identification to board commercial aircraft as they return from their holiday travels on January 1, 2010.

History

On May 11, 2005, Congress passed the REAL ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (P.L. 109-13), creating national standards for the issuance of state DL/IDs. The act establishes certain standards, procedures, and requirements that must be met by May 11, 2008, if state-issued DL/IDs are to be accepted as valid identification by the federal government.

While the act required compliance with its provisions by May 2008, the U.S. Department of Homeland Security (DHS) did not issue the final rule guiding implementation until January 11, 2008. The final rule incorporated many of the recommendations made by states, including the adoption of a 10-year compliance timeline that established milestones for states and provided some flexibility to manage the DL applicant pool, but maintained several requirements that pose significant challenges to states' compliance.

The final rule required states to be in compliance with REAL ID by May 11, 2008, unless the states received an extension from DHS. States were given until March 31, 2008 to request an extension. States were informed that if they did not negotiate an extension by the deadline, any

DL/IDs issued by that state would not be accepted for identification purposes to board commercial aircraft.

If states demonstrate they have achieved material compliance, but have not reached full compliance by December 31, 2009, they may request a second extension until May 11, 2011. After the 2011 deadline, states are expected to issue fully compliant REAL ID cards.

PASS ID: the Way Forward

REAL ID is not working. With one-fifth of states not participating in REAL ID, it does not fulfill the 9/11 Commission recommendation to enhance the security of all DL/IDs.

PASS ID offers a more secure path forward. It would keep the requirements of REAL ID that work while eliminating those that cannot be implemented. In doing so, PASS ID will offer those states with laws prohibiting compliance with REAL ID to participate in a more secure system for DL/ID issuance. PASS ID accomplishes this by making several key changes to reduce costs and strengthen privacy protections.

Cost – The Office of Management and Budget estimated in the final rule for REAL ID that the law would cost states \$3.9 billion over 11 years. To date, the Department of Homeland Security has distributed approximately \$130 million in grants to help defray states' costs. At a time when states across the country are facing a severe fiscal crisis and projected deficits of \$200 billion over the next two years, there simply are not the resources to meet the federal mandates in REAL ID.

PASS ID would reduce costs by eliminating the requirement to use three electronic databases that either do not exist or are not nationally deployed and in use by states. These databases (Electronic Verification of Vital Events, or EVVE, to verify vital records like birth certificates; a system to verify U.S. passport information; and a system to allow states to share DL/ID information with each other) are one of the primary cost drivers under REAL ID, and leave many unanswered questions including how the systems will be governed, how they will be maintained, their ultimate cost, and how they will protect personally identifiable information.

Rather than relying on costly new systems that raise significant fiscal and privacy concerns without providing a measurable increase in security, PASS ID would require states to utilize best practices that have been developed among states to authenticate applicants' information. PASS ID would retain the requirement that states verify legal status and social security information through the Systematic Alien Verification for Entitlements (SAVE) system and the Social Security On-Line Verification (SSOLV) system.

PASS ID also would eliminate the fees charged to states for the use of federal systems like SAVE and SSOLV. This change would bring the states' use of these databases in line with the private sector's use of systems such as E-Verify to check the legal status of job applicants. In addition, PASS ID would authorize the current DHS grant program to support state efforts to implement enhanced security measures for DL/IDs. This provision would ensure that all states receive a minimum amount of funding while allocating the remainder based on the relative

number of DL/IDs issued in a state and preserving flexibility for the Secretary to support innovative projects.

Utilizing OMB's cost estimates issued in the REAL ID final rule and information provided by states, NGA estimates that PASS ID could reduce the implementation costs of REAL ID by approximately half, from \$3.9 billion to close to \$2 billion.

Privacy – Another major area of concern with REAL ID is its requirement for the use of electronic databases and the expanded sharing of personally identifiable information. As discussed above, PASS ID would remove the requirement to utilize three electronic databases that either do not exist or are not nationally deployed. PASS ID, however, does continue work to develop these systems through a pilot program. For instance, the State of Mississippi is currently leading efforts to develop a “hub” system for states to share DL/ID information. PASS ID authorizes this to continue through a pilot program that will closely examine the governance, privacy, and cost issues that must be addressed in the development of any new system. Once these questions have been answered, states would have the option to participate in the systems.

In addition, PASS ID includes requirements to prevent the unauthorized access to or sharing of information; requires background checks for employees who will have access to personally identifiable information; and requires public notice of privacy policies and the establishment of a redress process for individuals who believe their personal information should be amended in state systems. PASS ID also would provide better protection of information contained in the DL/ID's bar code and would restrict the copying, trading, or sale of information on the bar code unless such use is consistent with federal, state, or local laws.

Common Misperceptions

Since its introduction, PASS ID has generated strong interest that has sometimes resulted in inaccurate reporting and analysis. I'd like to take this opportunity to clarify exactly what changes PASS ID would make to existing law and the impact these changes will have.

Appendix B includes a chart showing the 18 benchmarks required for material compliance under REAL ID and the changes made by PASS ID. As you'll see, PASS ID would continue to require all but two of these benchmarks. The following summarizes some of the key provisions of REAL ID that are retained by PASS ID:

- **Security Standards** – PASS ID would establish national security standards for DL/ID issuance, including multiple security features to protect the physical integrity of the identification document; requirements for the physical security of DL/ID issuance and processing facilities; requirements and standards pertaining to the identity documents that may be accepted by a state department of motor vehicles (DMV) from a DL/ID applicant; and record retention standards.
- **Legal Presence** – PASS ID retains the REAL ID requirement that a DL/ID applicant must be legally present in the United States. The categories of individuals eligible for a PASS ID are the same as those under REAL ID.

- ***Standards for Source Documents*** – REAL ID established national standards for source document verification that rely upon untested electronic systems that are not fully developed. For instance, while several states have begun utilizing the EVVE system to check birth records, the information contained in these databases is incomplete, and therefore, insufficient to allow for electronic verification in all cases.

PASS ID also establishes national standards for source document verification, including the use of federal databases to check legal status and social security information (SAVE and SSOLV). Rather than requiring the use of systems that are still under development and are unlikely to be deployed in time for states to meet the REAL ID deadlines, PASS ID requires the use of best practices to check such information through currently available means. PASS ID would continue to support the development of additional verification systems through a pilot program.

- ***Compliance Marking*** – PASS ID would require states to clearly mark DL/IDs that are compliant with the law's requirements. PASS ID would eliminate an unnecessary requirement of REAL ID to mark non-compliant cards as non-compliant because it does not contribute to security.
- ***Implementation Timeline*** – Under REAL ID, states must be compliant with the 18 benchmarks by December 31, 2009, and must be fully compliant by May 11, 2011. Full compliance requires the use of the three electronic databases discussed above that are not implementable at this time. REAL ID then requires a tiered implementation timeline whereby states must ensure all residents age 50 or under have a compliant DL/ID by December 1, 2014, and all those over the age of 50 by December 1, 2017.

PASS ID ties implementation to the issuance of final regulations and could allow states to achieve compliance ahead of the REAL ID deadline. PASS ID requires DHS to issue final regulations within nine months of enactment. States must then begin issuing compliant DL/ID's a year after final regulations and must complete enrollment five years after that. This means that if PASS ID is enacted this year, states would complete enrollment by September of 2016.

- ***One driver, one license*** – PASS ID would require states to utilize best practices that have been developed by DMVs to help ensure that individuals do not hold more than one DL/ID. REAL ID requires this be accomplished through the electronic sharing of state DL/ID information with other states through a "hub" system. This requirement, however, would impose significant costs, creates substantial privacy concerns, and has contributed to the enactment of state laws prohibiting compliance with REAL ID.
- ***Verification of Social Security Information*** – PASS ID retains the REAL ID requirement to verify applicants' social security information with the federal government through the SSOLV database.

- **Official Purpose** – PASS ID clarifies the official purpose of REAL ID to make clear that an individual who does not present a compliant DL/ID at the airport may not be denied boarding a commercial aircraft solely due to the failure to present a compliant DL/ID. DHS has previously acknowledged that this would be the case under REAL ID.

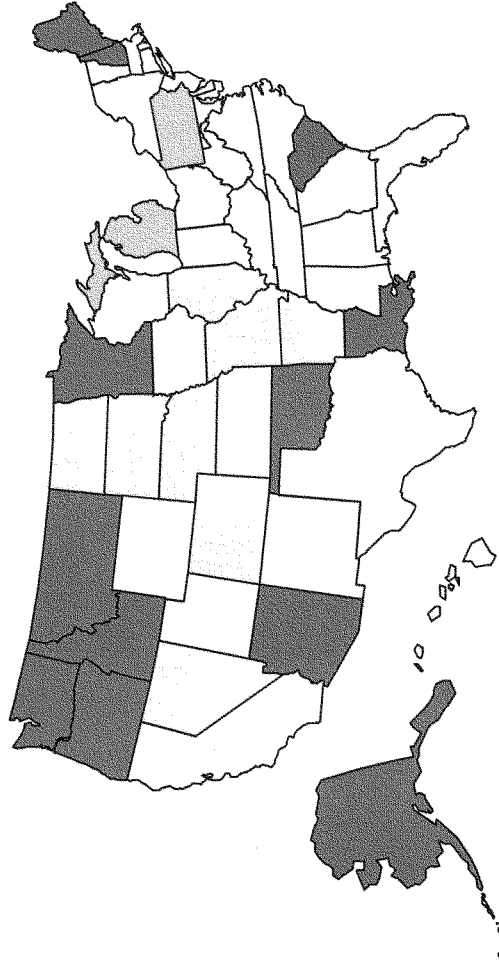
Of the 18 benchmarks, PASS ID would eliminate two requirements that are not workable or that do not contribute to enhancing the security of DL/IDs. These are the requirements to commit to be in full compliance by May 2011 and to mark non-compliant DL/IDs as non-compliant. As discussed above, the deadlines under REAL ID are not workable. Therefore, PASS ID would replace the current timetable for compliance with one that states can actually implement. With respect to the requirement to mark non-compliant licenses as non-compliant, this is an unnecessary requirement of REAL ID that does not contribute to security. If a DL/ID does not contain the required marking to show that it is compliant, the DL/ID is, by default, not compliant.

Conclusion

REAL ID is broken and the uncertainty of its future leaves us all less secure. PASS ID would better protect safety and security by enhancing the integrity of all DL/IDs. PASS ID would not only enhance security, but it would do so at lower cost, with better privacy protections, and in greater coordination with key stakeholders.

On behalf of the nation's governors, I strongly urge your support for the PASS ID Act and urge the Committee to favorably report this legislation to the Senate as expeditiously as possible. While many states are moving forward in meeting the 18 benchmarks, full compliance with REAL ID will be difficult, if not impossible. As a critical deadline approaches at the end of this year, there is a great deal of uncertainty about the path forward. PASS ID will provide certainty and build upon the progress made to date.

Thank you for the opportunity to testify today. I am happy to answer any questions.



18 Benchmarks

BENCHMARK NUMBER	BENCHMARK REQUIREMENTS	REAL ID	PASS ID	NOTES
1	Mandatory facial image capture which state must retain	✓	✓	Clarifies image can be captured when application is submitted. Allows electronic or hard copy storage of source documents
2	Applicant must sign a declaration under penalty of perjury that the information presented is true and correct	✓	✓	No change
3	Applicant must present at least one of a finite list of source documents when establishing identity	✓	✓	No change
4	Require documentation of: <ul style="list-style-type: none"> • Date of birth • Social Security Number • Address of principal residence • Evidence of lawful status 	✓	✓	No change
5	State must have a documented exceptions process	✓	✓	Move from regulations to statute
6	Make reasonable efforts to ensure that the applicant does not have more than one DL or ID	✓	✓	Change to reflect the use of best practices and the elimination of requirement to utilize a new driver's license "hub" database
7	Verify lawful status through SAVE	✓	✓	No change
8	Verify Social Security account numbers through SSOLV	✓	✓	No change
9	Issue DL and IDs that contain integrated security features	✓	✓	Change to conform to regulations
10	Surface of cards must include basic information regarding the cardholder	✓	✓	Change "full legal name" to "legal name"; move exceptions process for inclusion of address of principal residence on the card from regulations to statute
11	Mark fully compliant DL and IDs with a DHS-approved security marking	✓	✓	Change to conform to regulations
12	Issue temporary or limited-term licenses to all individuals with temporary lawful status and tie license validity to the end of lawful status	✓	✓	No change
13	Have a documented security plan for DMV operations	✓	✓	Change to conform to regulations
14	Have protections in place to ensure the security of personally identifiable information	✓	✓	Strengthened
15	Fraudulent document recognition training and security awareness for DMV employees	✓	✓	No change

BENCHMARK NUMBER	BENCHMARK REQUIREMENTS	REAL ID	PASS ID	NOTES
16	Background checks for employees with access to personally identifiable information	✓	✓	No change
17	Commit to be in full compliance with Subparts A through D on or before May 11, 2011	✓	X	Require states to begin issuing compliant DL/IDs one year after final regulations and to complete enrollment five years after that. Puts full implementation on track for 2016, as opposed to December 2017 under REAL ID
18	Clearly state on the face of non-compliant DLs or IDs that the card is not acceptable for official purposes, except for licenses renewed or reissued under § 37.27	✓	X	Require marking on compliant DL/IDs only

Testimony of Ari Schwartz
Vice President
Center for Democracy & Technology

Before the U.S. Senate Committee on Homeland Security and Governmental
Affairs

Hearing on "Identification Security: Reevaluating the REAL ID Act"

July 15, 2009

On behalf of the Center for Democracy and Technology (CDT), thank you for the opportunity to participate in this hearing on Identification Security and S. 1261, the PASS ID Act.

CDT is a nonprofit, public interest organization dedicated to keeping the Internet open, innovative and free. CDT has been a leader in the policy debates over privacy issues raised by government identification programs. In particular, CDT has argued that Congress should amend the REAL ID Act to address key privacy flaws in the program and promote stronger privacy protections in state ID initiatives that threaten privacy and security separate and apart from the mandates of REAL ID.

CDT applauds the Committee for revisiting the REAL ID Act and commends Senators Akaka and Voinovich for initiating a dialogue on how identification security can be improved in a privacy-protective way. Our testimony will begin with some observations about the privacy issues associated with government identification programs and will describe how REAL ID exacerbated these privacy concerns. We will then offer CDT's analysis of the PASS ID Act. We will close with some suggestions for how Congress might strengthen the bill.

CDT has long supported the goal of making driver's license issuance more secure. The 9/11 Commission drew attention to crucial security gaps associated with the issuance of driver's licenses and ID cards. However, starting even before 9/11, but spurred by these findings, states have been moving towards greater standardization of driver's license design and greater centralization of personal data in Department of Motor Vehicle (DMV) databases, and those efforts will likely continue regardless of what Congress does. Three key trends in state driver's license programs pose serious privacy concerns for the 240 million Americans and lawful residents who carry government-issued identification credentials:

CENTER FOR
DEMOCRACY Keeping the Internet Open, Innovative, and Free
TECHNOLOGY 1634 1st, NW, Suite 1100, Washington, DC 20006 • v. +1.202.637.9800 • f. +1.202.637.0968 • <http://www.cdt.org>

- 1) Driver's licenses and ID cards are being designed with standardized machine-readable zones (MRZs), and these features are being implemented in unprotected and interoperable ways.
- 2) Because information contained on cards is unprotected and the technologies are interoperable, information in the MRZ can be read, stored, and re-used by commercial and governmental entities with few limitations, facilitating intrusive tracking and profiling.
- 3) ID card systems increasingly include a centralized back-end information component containing vast amounts of identity data, vulnerable to theft and internal abuse if not properly protected.

REAL ID failed to address the concerns raised by these trends. In fact, the Act and final rule created new privacy and security risks while exacerbating old ones. If REAL ID were to go forward, it would:

- Create a *de facto* national ID system with a serious risk of mission creep. If fully implemented, the program presents the very real possibility that individuals would not be able to function in American society without a REAL ID card.
- Centralize vast amounts of sensitive, personally identifiable information (PII) through the creation of a centralized ID database. Such a database would create a valuable treasure trove of identity data, vulnerable to identity thieves, hackers, and internal abuse.
- Mandate a standardized MRZ on all REAL ID cards without requiring protections against skimming, which will facilitate intrusive tracking by unauthorized governmental and private entities.
- Fail to adopt meaningful privacy and security standards for the protection of personal information in the REAL ID system.

The REAL ID Act is not the only troublesome ID card program. In a related initiative, the Department of Homeland Security (DHS) is creating enhanced driver's licenses with imbedded, insecure RFID chips (so-called "vicinity-read" RFID) that will threaten the personal privacy and security of many American citizens living and working along our borders. The State Department's passport card also incorporates these insecure RFID chips.

The approach proposed in the PASS ID Act, S. 1261, mitigates many of the major privacy risks that REAL ID created while still imposing minimum standards for driver's license issuance. Most notably, the PASS ID Act:

- Eliminates the requirement under REAL ID that states give all other states "electronic access" to personal information in DMV databases, thus taking away one impetus for further centralization of identity data.
- Removes from DHS's authority the ability to unilaterally determine new official purposes for which a PASS ID-compliant card can be required, mitigating (though not eliminating) the potential for mission creep.
- Requires that states adopt privacy and security safeguards for personally identifiable information contained in DMV databases.
- Provides some protections for personal information stored in the MRZ by limiting the storage, use, and re-disclosure of that information by unauthorized third parties.

The new bill incorporates nearly all of the substantial privacy protections from the REAL ID repeal bill that CDT supported in front of this committee in the 110th Congress and a few more. CDT urges Congress to ensure that these provisions are not weakened.

While PASS ID is a major improvement over current law, the bill should be strengthened to further protect privacy and civil liberties while still achieving security objectives. PASS ID provides the opportunity to establish privacy guidance and protections for features of the state driver's license system that will exist regardless of REAL ID. Specifically, PASS ID could be further strengthened by:

- Mandating encryption or other security features to protect against unauthorized scanning of information in the licenses' MRZ.
- Limiting the data elements that may be contained on the MRZ to only what is necessary for legitimate law enforcement or DMV administrative purposes. (This could be accomplished by amending § 242(b)(9) in the proposed Title II, Subtitle E of the Homeland Security Act.)
- Reject the use of "vicinity-read" RIFD technologies (now incorporated in enhanced driver's licenses) in PASS ID cards. (This could be accomplished by amending § 242(a)(4) in the proposed Title II, Subtitle E of the Homeland Security Act.)

- Require encryption to protect any PII transmitted electronically for PASS ID compliance purposes. (This could be achieved in Sec. 5(b)(2) of the PASS ID Act.)
- Remove or substantially shorten the retention requirement for physical or electronic copies of source documents. (This could be addressed in § 242(d)(1) in the proposed Title II, Subtitle E of the Homeland Security Act.)

CDT looks forward to working with Congress to make these and other improvements to the PASS ID Act as the bill moves forward.

■ Government Identification Programs Raise Privacy Concerns

In recent years, the federal government has launched a variety of ID card programs, with the goal of making government-issued cards more reliable as identity credentials and to address the security gaps identified by the 9/11 Commission. Alongside these initiatives, states have been redesigning their driver's license systems to incorporate a number of advanced technology features.

While the goal of increasing security in the issuance of driver's licenses and ID cards is an important one, it should not be pursued without addressing the critical privacy and security risks posed by the technology features and back-end information systems that these ID programs are beginning to incorporate. Three key trends in ID card development threaten the civil liberties of the 240 million Americans and lawful residents who hold government-issued identity credentials:

- 1) Driver's licenses and ID cards are being designed with standardized machine-readable zones (MRZs), and these features are being implemented in unprotected and interoperable ways;
- 2) Because the information on the cards is not protected against skimming and the technologies are interoperable, the cards can be read by unauthorized commercial and governmental entities and the electronic data they contain can be stored and redisclosed, facilitating intrusive tracking and profiling; and

- 3) ID card systems increasingly include a centralized back-end information component containing vast amounts of sensitive, personally identifiable information (PII), which attracts motivated hackers and identity thieves and facilitates internal abuse if not properly protected.

The irony is that many technologies aimed at providing more secure licenses or more efficient licensing can actually threaten both security and privacy if not properly designed and implemented. CDT has reported on examples of these cases in the past and it is important to recognize that these threats to individual Americans continue to occur frequently.¹ Many recent cases of internal abuse and data theft underscore yet again the need for minimum standards to protect against unauthorized use and disclosure of sensitive PII collected and maintained at state DMVs:

- North Carolina -- Thieves stole a computer containing records from a DMV office, including Social Security numbers, birth dates, and driver's license numbers. The DMV believes that the theft's purpose was to make counterfeit licenses. The DMV took three weeks to notify the 16,000 people affected by the breach.²
- California -- Five former DMV employees were found guilty in a fake ID scheme, issuing fraudulent driver's licenses and identification cards between November 2003 and July 2005 for bribes. People paid \$1,000 to \$1,500 per license.³
- Colorado -- Security flaws were found that could affect all 3.4 million active DMV records. The State Auditor discovered that the DMV "sends large batches of personal information over the Internet without encryption" (in clear text). In addition, the DMV did not reset database permissions properly, and up to 33 former employees were still able to access the Driver's License Information System database (some for over one year after their departure). Accessible information included names, addresses, dates of birth, and Social Security numbers.⁴

¹ Center for Democracy & Technology, "Unlicensed Fraud: How bribery and lax security at state motor vehicle offices nationwide lead to identity theft and illegal driver's licenses" (January 2004), available at <http://www.cdt.org/privacy/20040200dmv.pdf>.

² Associated Press, "Thieves take N.C. DMV computer with personal info," WCNC, September 28, 2006.

³ Henry K. Lee, "Former DMV worker sentenced to 366 days in ID scam," San Francisco Chronicle, April 30, 2007.

⁴ Jessica Fender, "DMV puts Coloradans at risk of ID theft," Denver Post, July 9, 2008.

- Washington, D.C. -- A former DMV employee was found guilty of issuing around 200 licenses to individuals who did not live in the district or were not U.S. citizens. People were charged \$1,000 to \$1,700 per license.⁵
- Massachusetts -- A Registry of Motor Vehicles employee was arrested for issuing driver's licenses to undocumented workers for \$1,000 each. The employee is accused of creating licenses with Social Security cards and birth certificates that belonged to people other than the ones she issued licenses to.⁶

These incidents make it clear that the computerization and centralization of driver's license data creates risks to both security and privacy. The addition to cards of advanced features such as an MRZ does not necessarily produce more secure or reliable cards, especially if the back-end databases and other procedures are insecure. Congress should be concerned about these types of incidents, not only for national security purposes but also because such abuses place everyday Americans at increased risk of identity theft and intrusive tracking by third parties. These incidents demonstrate the need for stronger minimum standards for card issuance and privacy protections for associated identity information to ensure that privacy and security risks are not aggravated in the process of trying to improve driver's license and ID card issuance.

REAL ID and Related Initiatives Exacerbate Privacy and Security Risks

REAL ID (as defined by the REAL ID Act and DHS's final rule) and the related enhanced driver's license (EDL) and passport card initiatives exemplify problematic trends in government identity programs. In fact, these programs have been implemented in a way that exacerbates the privacy and security concerns, defeating many of their professed security objectives.

REAL ID

Following the 2001 terrorist attacks, the 9/11 Commission Report underscored the need for minimum federal standards for issuance of driver's licenses and ID

⁵ Timothy Warren, "DMV worker gets time in prison; Paid to issue fake licenses," Washington Times, August 15, 2008.

⁶ Eric Moskowitz, "Registry worker charged in bribe licensing scheme," Boston Globe, March 20, 2009.

cards. To implement the Commission's recommendation, the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 established a negotiated rulemaking process to craft such standards. However, before that process could bear fruit, Congress passed the REAL ID Act of 2005. Added as a rider to a war and tsunami relief appropriations bill, the REAL ID Act was passed with little debate or input from key stakeholders, including privacy advocates.

More importantly, the REAL ID approach presented critical privacy and security risks. If implemented, the REAL ID Act would:⁷

- **Create a *de facto* national ID system with a serious risk of mission creep:** The REAL ID Act and final rule would create a *de facto* national ID system for the 240 million Americans and lawful residents who carry state-issued driver's licenses or ID cards. Neither the Act nor the accompanying regulations placed any limits on the permissible uses of the REAL ID card, giving unfettered discretion to DHS to expand the "official purposes" for which REAL ID cards could be required, thus creating a serious risk of "mission creep." If merchants and other third parties are free to ask for the card and collect data from it, there is a very real possibility that individuals would not be able to function in American society without a REAL ID card.
- **Create a centralized ID database:** The Bush Administration adamantly denied it, but REAL ID would likely result in the creation of a central ID database (or system of databases) by, among other things, requiring that states "provide electronic access" to all other states to information contained in motor vehicle databases. Intended to support the goal of "one driver, one license," such a centralized repository of identity information would be both unnecessary and especially vulnerable to hackers, identity thieves, and internal abuse.
- **Incorporate no meaningful privacy protections:** REAL ID adopted no meaningful privacy and security standards for the protection of personal information stored in the REAL ID system. The Act itself doesn't require any privacy or security safeguards for information collected and stored pursuant to the program. While DHS's regulations required that states develop a privacy policy and adopt reasonable safeguards to protect PII, the regulations did not provide any specific benchmarks against which DHS could assess states' compliance.

⁷ Center for Democracy & Technology, "Three Years Later: A Primer on REAL ID" (August 2008), <http://www.cdt.org/publications/policyposts/2008/13>.

- **Mandate a standardized, unprotected MRZ:** Finally, REAL ID mandated a standardized MRZ, with no requirement of encryption and no limits on the data elements it could contain. In addition, there are no limits on who can scan the MRZ, collect personal information, and record the cardholder's activities. The lack of security and privacy safeguards for the MRZ would facilitate intrusive tracking and profiling by both private third parties and unauthorized government entities.

At heart, not only would various mandates in the program be ineffective at making ID card and license issuance more secure, REAL ID created new privacy and security risks while exacerbating existing ones. CDT concluded that the REAL ID Act was so fundamentally flawed that changing DHS's regulations alone would be insufficient to address the serious risks posed.⁸

Recognizing the unfunded (and high) costs of the program and its impact on privacy and civil liberties, the states responded negatively to REAL ID, ranging from outright rejection of implementation to legislative resolutions expressing disapproval. The Bush Administration delayed implementation of the program, essentially passing to this Congress and the new Administration the question of how to proceed.

Enhanced Driver's Licenses and Passport Cards

REAL ID is not the only problematic ID card program. In a related initiative, several states are currently issuing enhanced driver's licenses (EDLs) with imbedded, insecure RFID chips as part of the Western Hemisphere Travel Initiative (WHTI). The long range (so-called "vicinity-read") RFID chip that DHS chose for this initiative is highly insecure. The technology was designed for tracking inventory, not people, and can consequently be read from a considerable distance by third parties using standardized and widely available equipment. The State Department's passport card also incorporates these insecure RFID chips.

When used for human identification, long range or vicinity-read RFID poses serious threats to personal privacy and security: it reduces user notice and control over when information is collected from the card and enables location tracking of the cardholder because the unique identifier stored on the chip can be easily skimmed (if unencrypted). These serious risks make such long range

⁸ Center for Democracy & Technology, "REAL ID: What Should Congress Do Now? CDT Analysis of the REAL ID Act and the Department of Homeland Security's Final Regulations" (Feb 2008), http://www.cdt.org/security/identity/20080201_REAL_ID_hillbrief.pdf.

RFID technology inappropriate for human identification and far outweigh the justifications asserted for its use in the EDL and passport card initiatives.⁹

☑ The PASS ID Act [S. 1261] Mitigates Major Privacy Issues REAL ID Raises

The Providing for Additional Security in States' Identification (PASS ID) Act [S. 1261] mitigates key privacy and security flaws in the REAL ID program. The approach the Act proposes will increase the reliability of driver's licenses and ID cards in a way that better protects privacy and civil liberties. CDT supports the adoption of the PASS ID Act as a much-needed improvement over current law.

Most notably, the PASS ID Act:

- **Removes the requirement that states "provide electronic access" to all other states to information contained in motor vehicle databases.** Instead, to ensure "one driver, one license," the Act takes a much less onerous and less privacy invasive approach, requiring states to "[e]stablish an effective procedure to confirm" that a person applying for a compliant license or ID card is terminating or has terminated any other compliant license or card issued by another state. This change takes away one impetus for further centralization of identity data. [Sec. 3 - §242(d)(5)]
- **Removes from DHS's independent authority the ability to determine new "official purposes" for which a compliant ID can be required.** PASS ID would require compliant cards for three specified official purposes and removes from DHS's authority the ability to unilaterally determine additional purposes (as REAL ID allowed). This change mitigates (though does not eliminate) the risk of mission creep. [Sec. 3 - §241(4)]
- **Requires privacy and security protections for PII in back-end systems.** The PASS ID Act requires states to establish administrative and physical safeguards to protect the PII collected and maintained for license and ID card issuance. The Act also specifies that states must have procedures to prevent unauthorized access to and use of PII; give public notice of

⁹ Center for Democracy & Technology, CDT Testimony on "The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative" (April 2008), available at <http://www.cdt.org/testimony/20080429scope-written.pdf>.

security and privacy policies; and establish a process for cardholders to access and correct their own PII. [Sec. 3 - §242(d)(7)]

- **Provides protections for personal information on the MRZ.** While the PASS ID Act still mandates the use of an MRZ, it prohibits the inclusion of the cardholder's Social Security number in the zone [Sec. 3 - §242(b)(9)] and places limits on the storage, use, and redisclosure of information contained in the MRZ. [Sec. 4]

In addition, the PASS ID Act would establish a State-to-State One Driver, One License demonstration project to evaluate the feasibility of establishing an electronic system to prevent an individual from obtaining more than one PASS ID-compliant driver's license or ID card at any one time. [Sec. 3 - §245] The project would include a review of the appropriate governance structures that will be necessary to prevent unauthorized use of PII in the system and to ensure its security and confidentiality.

■ Privacy Protections Could be Further Strengthened in PASS ID

While the PASS Act does not address all flaws in the REAL ID program, merely repealing REAL ID does not address all of the underlying privacy and security risks posed by government identification programs. PASS ID provides the opportunity to start building privacy guidance and protections into all state identification programs, addressing trends and issues that will exist regardless of REAL ID implementation.

There are a number of ways in which the PASS ID bill could be further strengthened to protect privacy and civil liberties, while still achieving security objectives. Specifically, CDT urges Congress to:

- Repeal the mandate for a standardized MRZ. Congress probably should not prohibit the trend towards inclusion of MRZs on state driver's licenses, but it should not be promoting this trend either. States should have the ability to consider and reject the use of MRZs if they determine the risks to privacy and security outweigh the benefits to their citizens.
- To the extent that states wish to include an MRZ, mandate encryption or other security features for the MRZ so that data cannot be read or used for unauthorized purposes.

- Limit the data elements that may be contained on the MRZ to only what is necessary for legitimate law enforcement or DMV administrative purposes.¹⁰ The less information contained in the MRZ, the less attractive skimming will be to unauthorized third parties.
- Reject the use of “vicinity-read” RFID technologies (now incorporated in EDLs and passport cards) in PASS ID-compliant driver’s licenses and ID cards.¹¹
- Require encryption to protect any PII transmitted electronically for PASS ID compliance.¹²
- Remove or substantially shorten the retention requirement for physical or electronic copies of source documents.¹³ Central retention of such sensitive documents creates a treasure trove of information that would attract identity thieves and facilitate internal fraud.

Finally, Congress should strengthen privacy protections for all Americans and lawful residents who carry government-issued identity credentials, regardless of PASS ID implementation, by shoring up the Driver’s Privacy Protection Act (DPPA). The DPPA is the main federal law protecting personal data in state DMV databases from disclosure to third parties. However, the DPPA contains a myriad of exceptions that virtually swallow the rule against disclosure of such data. Congress should amend the DPPA to protect against both governmental and commercial abuse of information by closing the loopholes it currently contains.

Congress should also directly address the privacy risks associated with state trends towards outsourcing management of personal information to private entities such as the American Association of Motor Vehicle Administrators (AAMVA). Congress should amend the DPPA to clearly extend application of protections to information systems managed by private, non-governmental entities to ensure uniform protection for all driver’s license information.

¹⁰ This could be accomplished by amending § 242(b)(9) in the proposed Title II, Subtitle E of the Homeland Security Act.

¹¹ This could be accomplished by amending § 242(a)(4) in the proposed Title II, Subtitle E of the Homeland Security Act.

¹² This could be achieved in Sec. 5(b)(2) of the PASS ID Act.

¹³ This could be addressed in § 242(d)(1) in the proposed Title II, Subtitle E of the Homeland Security Act.

■ Conclusion

Protecting privacy and security in identification programs is an ongoing process that requires continual attention to new risks, including the potential for third party profiling and fraud. The PASS ID Act would be a notable improvement over current law and provides an opportunity to start building in privacy guidance to address privacy and security risks that exist apart from REAL ID. The new bill incorporates nearly all of the substantial privacy protections from the REAL ID repeal bill that CDT supported in front of this committee in the 110th Congress and a few more. Most importantly, PASS ID: 1) removes the requirement that states provide electronic database access to other states; 2) takes away DHS's unilateral, independent authority to determine new purposes for a compliant ID; 3) requires privacy and security safeguards for information in back-end databases; and 4) imposes prohibitions on skimming and use of MRZ data.

CDT urges the Committee to ensure that these provisions are not weakened. We stand ready to work with Members of the Committee to improve privacy and security in driver's license and ID card issuance and in associated back-end information systems. Thank you again for the opportunity to testify.

STOP REAL ID



511Campaign.org

The 5-11 Campaign
100 E. 51st St. , #7 Austin, TX 78751
(512) 687-4069

United States Senate
Committee on Homeland Security & Governmental Affairs
Washington, DC 20510

ATTN: Trina Tryer
RE: Entry for Public Record on the Reevaluation of Real ID & Consideration of the
PASS Act

To the Honorable Members of the 111th Congress & DHS Senate Committee;

On July 15th, the Department of Homeland Security Senate Committee "re-evaluated the Real ID Act" and created an exploratory panel for the PASS Act, a substitution for the Real ID Act. We would like to add our observations and concerns about both Real ID and the PASS Act for the benefit of public record.

We begin by recognizing PASS Act regulations that are well intended enough to not be considered obstacles or setbacks to personal liberty by our organization, The 5-11 Campaign. We are not opposed to creating tamper resistant licenses, a uniform federal standard to supply accurate documents to license administrators to substantiate identity, or the intent to stop terrorism in our nation. These are in fact good policies that can add improvement to organize American life.

The 5-11 Campaign, however, does not ignore the PASS Act as a path to continue policies of identity surveillance present in the Real ID Act. All 50 States were needed to move forward with the plans for Real ID. We understand the PASS Act to simply be the rebranding of the Real ID Act. It's regulations are modified so it can continue to move forward over State laws established to stop national ID policy in 25 States, who opposed the Real ID Act. The PASS Act, if moved forward would allow Real ID regulations and policies to continue, including regulatory unfunded mandates for RFID and biometrics technologies to all 50 states, with special emphasis on border states.

We are particularly wary of the DHS Senate Committee overlooking the 11 states who passed resolutions against the Real ID Act, and 2 of 15 states who have passed laws against the Real ID implementation. It has only acknowledged 13 of these states publicly during the hearing. 7 other states introduced legislation opposed to Real ID this year were: Connecticut- Senator Joe Lieberman's home state, Iowa, Rep. James Sensenbrenner's state of Wisconsin, and Texas, home to both Rep. Lamar Smith and Rep. Ron Paul - at strong opposite ends of advocating the issue from within the same party.

STOP REAL ID



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(512) 687-4069

The excesses of political failure attached to a Bush Administration are earmarked in the Real ID legislation. It is clear to all involved, that there is an opportunity to create better standards for identity today. The American person is ill served in terms of security and scope of practicality in both the PASS Act and in the Real ID Act.

The potential for public-private collusion with local fusion centers over the sale and dissemination of information gathered by "machine readable zone technologies" without the consent of cardholders creates great risk for the betrayal of public trust. RFID & biometrics have a well documented history that they are insecure, conspicuous to identity predators, and therefore inappropriate for government sanctioned identity. This is not the whole of our concerns.

We reflect and uphold the standard concerns of the following organizations: the CATO Institute, the ACLU, the Electronic Privacy Information Center, the Electronic Frontier Foundation, ALIAS, The No Border Wall Coalition, The Center for Constitutional Rights, Downsize DC. This may extend to most any other organization whose pre-existing concerns against the Real ID Act were not satisfied by the privacy, personal liberty, human rights, immigration considerations and changes presented in the PASS Act.

To encourage legislators, who are now held to a standard consistent with recommendations in the 9-11 Commission report, you have time to create "a better mousetrap". In 2001, there was no law that required you to have identity to fly. Travellers provided identity as a commercial concession to airlines. It has become our misfortune that American identity has become a misplaced focal point for sussing out terrorists, who would evade regulatory conventions. Identity fraud evolves accordingly. I believe a more forthwith interpretation of the 9-11 Commission Report is in order. Most legislators could afford reason to hit a "reset" button on the matter and start afresh on other salient recommendations. Everyone deserves a second chance at this, especially the American people.

Identity is personal. There isn't a separate identity standard for national leaders and the American public. Everyone uses licenses and ID cards to operate in the tasks of daily living. Critics of the Real ID and the PASS Act criticize the scope of how a national identity plan affects the individual citizen, as well as the aspiring immigrant. It is unnecessary for us to sustain an identity system that would eventually lead to a societal dynamic which criminalizes citizens for lack of identity.

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The 5-11 Campaign
 100 E. 51st St. , #7 Austin, TX 78751
 (512) 687-4069

In our research we found influences outside of domestic governance had a hand in creating the Real ID program. DHS has adopted international policy drafted in the Western Hemisphere Travel Initiative. This may explain the nature of how a plan for U.S. national identity evaded by a populist debate and the robust scrutiny of the U.S. Congress. Other international and UN think tanks were involved in the plan to incorporate national-to-international identity with fluidity over terms of immigration. We find fault with the plan for a North American Community, as many do over the span of this continent. We have had no forum to dispute our involvement and what is required from us as individuals to move any such plan forward. Unfortunately, resistance to this agenda has found its way to you. You need our consent, volition, involvement, and our money to to fulfill this plan; which you are simply not seeing from the American people.

We believe part of the reason is based on the consultancy you contracted for purposes of evaluating and creating a national identity program by Homeland Security. DHS' contract with Marcus Wolf, former East German state intelligence directorate (STASI), provided "keys to the kingdom" for totalitarian governance. Policy based on the privacy ethics of a closed society in the 1950's known for it's oppressive surveillance of personal identity, contradicts elected officials oath of office to protect and defend the U.S. Constitution. Additionally, subordinating the quality of American life, by our standards, to the passive-aggressive strategies of Israeli protectionism is, harsh, excessive and inappropriate. Israel's policy to use pre-emptive criminal evaluation and to incorporate prolific checkpoints in society creates hostility where there is none.

I encourage those evaluating American defense and national security to call in other nations who have little to no terrorist threats hanging overhead and observe what they have done right to deter terrorism. We believe this is just one alternative to perpetuating a standard to continually and fearfully stave off middle-eastern blowback to the point where Americans must sacrifice their identity in unnecessary and costly dramas every day. We deserve to move on from the events of 9-11.

Please repeal the Real ID Act. Accompanying this letter is a model of repeal legislation for working ideas on what we feel is the best approach to start afresh, creating more secure standards for American identity while abandoning the extreme direction both PASS ID and Real ID would take U.S. identity. This is an opportunity for Statesmen, workhorses and capitulators alike. We welcome the changes to come.

STOP REAL ID



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We ask you to :

- Vote NO on the PASS Act
- Adopt legislation to repeal Real ID and to continue to consider other legislations to replace Real ID
- Suspend implementation of the Real ID based on a rule or judgement, until a better law is available
- Freeze budget allocations to State governments to implement Real ID regulations
- Provide a forum for a comprehensive debate over National identity & Immigration, to the event of decoupling the issues
- Afford yourselves a less drastic timeline for staggered, reachable goals based on priorities
- Work with statesmen, civil liberty, technology, identity security and privacy advocates on future rule making processes
- Creating a government accountability panel on identity matters for a nation as diverse as the United States

Thank you for your service to the U.S. and to us. We know you are committed to the protection of this great nation. We look forward to working with those who agree and disagree with us for the benefits of long term progress.

Respectful regards,

Sheila Dean

The 5-11 Campaign

PROPOSED REPEAL LEGISLATION of THE REAL ID ACT

WHEREAS, The REAL ID Act of 2005 was enacted by the United States Congress as part of a broad supplemental appropriations package relating to homeland security issues, with no established debate; the Act requires all 50 states to validate primary documents used to obtain a driver's license or identification card and to issue licenses and ID cards in a uniform, federally approved format if the licenses and cards are to be accepted as identity documents by the federal government; and

WHEREAS, The total cost for the initial implementation of the new regulations has been estimated to be \$9.9 billion, though to date Congress has appropriated only a fraction for the effort; given the expense of the program and the minor Congressional contribution, the REAL ID Act is effectively an unfunded mandate, as federally approved identification is required for a United States citizen to board a commercial airplane, make transactions with a federally licensed financial institution, enter a federal

building, or apply for federally supported public assistance, such as Social Security; and

WHEREAS, In addition to unease about expense, provisions of the REAL ID Act raise concerns about data security and possible identity theft; the Act requires statewide databases to be integrated and shared with the federal government, but does not establish clear security standards for the network nor designate an entity to control access to the system; and

WHEREAS, The proposed rule making may be based on poorly enforced, established immigration policy, and obscured facts as 9-11 hijackers obtained VISAs and were present in the U.S. legally; and

WHEREAS, The use of biometrics, RFID, and other regulated surveillance technologies have not proven effective for expediting traffic across U.S. borders, or

delivered consistent accuracy in proving bonafide identity of adopters of the technologies; and

WHEREAS The U.S. people would suffer unreasonable search and seizure against the 4th Amendment according to Real ID mandates and regulations requiring one-to-many uses of biometrics, RFID microchips, and facial recognition technologies; and

WHEREAS, These ambiguities in the legislation make it more likely that information about a driver's license or ID card holder could be illegally accessed through another state's less secure system, creating a vulnerability where none currently exists and increasing the likelihood of the very threat the program was designed to minimize; furthermore, some states' officials have pointed out that their computer systems are not even capable of verifying documentation as required by the Act; and

WHEREAS, The negative implications of the federal regulations are raising concerns nationwide, with 43 states currently considering legislation questioning, opposing, or refusing to carry out the requirements of the REAL ID Act; considering the obvious fiscal consequence to U.S. States and the considerable flaws inherent in the federal requirements, it is incumbent on U.S. States to act likewise; now, therefore, be it

RESOLVED, That the 111th Congress of the U.S. States hereby comprehensively repeal the federal REAL ID Act of 2005; and, be it further

RESOLVED, That no replacement containing language of the Real ID Act remain as federal law in the United States of America.

U.S. SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

July 15, 2009

***IDENTIFICATION SECURITY:
REEVALUATING THE REAL ID ACT***

STATEMENT FOR THE RECORD

SUBMITTED JOINTLY BY:

JANICE L. KEPHART

National Security Policy Director, Center for Immigration Studies

and

JENA BAKER MCNEILL

Policy Analyst, Homeland Security, Heritage Foundation

Backgrounder

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Identification Security: Reevaluating the REAL ID Act

Janice L. Kephart and Jena Baker McNeill

Members of the Senate Committee on Homeland Security and Governmental Affairs introduced the Providing for Additional Security in States' Identification (PASS ID) Act of 2009 on June 15, 2009. This act would repeal substantive provisions of the REAL ID Act of 2005,¹ which aimed at ensuring that all states meet minimum security standards for issuing driver's licenses in order to enhance national security, increase driver safety, combat drug running, and better safeguard against identity theft and fraud.

While no state is compelled to comply, approximately 30 states are actively moving to meet REAL ID's minimum standards, which will help to make America less vulnerable. Opponents of REAL ID have painted the law as an affront to privacy and states' rights, but the reality is that REAL ID is an appropriate means for maintaining liberty and security. Congress should preserve REAL ID, fund it adequately, and take steps to ensure its full implementation.

A 9/11 Commission Recommendation

REAL ID was enacted in 2005 in direct response to recommendations of the 9/11 Commission that the federal government set secure standards for identifications, such as driver's licenses. The commission found that 18 of the 19 hijackers on September 11, 2001, obtained 17 driver's licenses and 13 state IDs, including at least seven obtained by fraud in Virginia. Six of these IDs were used to help the hijackers board planes on the morning of 9/11.² Of the legally obtained IDs, many were duplicates, with some states issuing the same hijacker multiple licenses over a

Talking Points

- America has a need for more stringent driver's license security standards to enhance national security and driver safety, combat drug running, and better safeguard against identity theft. REAL ID is legislation, enacted in direct response to the 9/11 Commission recommendations, that meets these goals while maintaining privacy, safeguarding states' rights, and maintaining individual liberties.
- PASS ID would repeal REAL ID outright, stripping away the substantive provisions that are already making driver's licenses more secure, including a repeal of 9/11 Commission identity verification recommendations, information sharing between states, airport ID security standards, and a rollback of compliance deadlines.
- Congress should preserve REAL ID, fund it adequately, and take steps to ensure its full implementation by moving interested states into the program, and allowing flexibility to the state grant program.

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period of several months. In its report, the 9/11 Commission recommended:

Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of information, such as drivers licenses.³

Most of the REAL ID provisions were adopted from a secure ID framework drafted by the American Association of Motor Vehicle Administrators (AAMVA) and published in a lengthy report in response to the 9/11 Commission's investigation.⁴ The standards emphasized that identity documents must be secure in their content, physical features, and issuance process. Without identity security at the base of identity document issuance processes, the AAMVA concluded that driver's license issuing standards would not produce secure licenses.

The Need for Standards

The need for more stringent standards dates back to before 9/11. Identity has always been the cornerstone of a free society, and for decades the key form of identification in the United States has been the driver's license. In its 2004 Security Framework, the AAMVA identified clear security parameters:

The license is now readily accepted as an official identification document for both licensed drivers, and, in most jurisdictions, for non-drivers. The Motor Vehicle Administrations (MVAs) who issue these documents

have unique, continuous and long-lasting contact with most of their constituents from the individual's teenage years onward.

Most MVAs allow driver's license reciprocity with other MVAs; therefore a common security protocol among MVAs is necessary. This document provides minimum standards of security, interoperability and reciprocity agreed upon by all North American MVAs regarding driver's license/identification card (DL/ID) issuance. Each MVA shall:

- Either meet or exceed the requirements of the Security Framework based on risk analysis and resource availability.
- Determine that all individuals granted a DL/ID "are who they say they are."
- Ensure that each individual issued a DL/ID "remains the same person" throughout subsequent dealings both with itself or any other MVA.⁵

Licenses have often been copied or manipulated and are subject to vast amounts of identity theft and fraud. For example, a woman in Florida pleaded guilty to obtaining a fake driver's license in someone else's name and using it to draw on the victim's bank account and to obtain credit cards, charging about \$4,000 on those cards.⁶ Driver's license fraud rings have been prosecuted nationwide, including well-known cases in Michigan, Pennsylvania, New Jersey, New York, and Ohio.⁷ The Castorena Family Organi-

1. Public Law 109-13, §§ 201-207.
2. Janice L. Kephart, "Identity and Security: Moving Beyond the 9/11 Staff Report on Identity Document Security," 9/11 Security Solutions, February 23, 2007, pp. 8-11, at http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=1176&Itemid=38 (May 22, 2009).
3. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton and Company, 2004), p. 390, at <http://www.9-11commission.gov/report/911Report.pdf> (May 21, 2009).
4. American Association of Motor Vehicle Administrators, "AAMVA DL/ID Security Framework," February 2004, at <http://www.aamva.org/aamva/DocumentDisplay.aspx?id={25BBD437-FC4F-4852-A392-B91046252194}> (May 26, 2009).
5. *Ibid.*, p. 8.
6. U.S. Department of Justice, "Identity Theft and Identity Fraud," at <http://www.usdoj.gov/criminal/fraud/websites/idtheft.html> (May 22, 2009).
7. Kephart, "Identity and Security," pp. 10-11; Janice L. Kephart, presentation at panel on "Making REAL ID Real: Implementing National Standards," The Heritage Foundation, audio file, January 16, 2008, at <http://www.heritage.org/press/events/ev011608a.cfm>; and Janice Kephart, "Ohio Driver's Licenses Hit by Four-Year ID Theft Scam," Center for Immigration Studies, December 17, 2008, at <http://cis.org/kephart/OHDriversLicense> (May 26, 2009).

zation operated franchises in every major city in the United States for over a decade, reaping millions of dollars annually from counterfeited and stolen IDs.⁸

To address the 9/11 Commission's and AAMVA's recommendations and growing media attention on the issue of driver's license fraud, Congress enacted the REAL ID Act in 2005. The act includes the following compliance requirements:

- **Identity verification.** Each driver's license or identity card will be required to contain a person's full legal name, signature, date of birth, gender, driver's license or identification number, photograph, and the address of the person's principal place of residence.
- **Document authentication.** States are required to digitize birth records (another key 9/11 Commission recommendation) and review the authenticity of the information provided to obtain a license, such as Social Security information, immigration or lawful presence documentation, and other proof of identity, such as principal place of residence.
- **Card security.** REAL ID requires a certain level of physical security features to ensure more tamper-proof cards.
- **Security plans.** To ensure states meet security and privacy standards and to hold them accountable, REAL ID requires states to submit detailed security plans.
- **One driver, one license.** REAL ID requires creation of a network of state databases to enable states to verify that applicants do not hold multiple licenses in multiple states, some-

thing states already do voluntarily for commercial licenses and "bad" drivers. They are also exchanging digital images of drivers outside of REAL ID requirements.

- **"Official purposes" requirement.** REAL IDs will be required to board a commercial aircraft or enter a federal building and other areas deemed for "official purposes."⁹

Concerns Mitigated

Some controversy began soon after REAL ID was enacted. States were unhappy about paying to upgrade their licensing systems to meet the REAL ID standards.¹⁰ Privacy advocates feared the onset of a national identification card and creation of national databases.¹¹ Even before the proposed regulations were released in 2008, state legislatures began to make assumptions about REAL ID, which led to significant misinformation about the program's execution.

By January 2008, when the Department of Homeland Security (DHS) rolled out the REAL ID regulations, the states' substantive concerns had been assuaged. To ease their cost and logistical concerns, compliance times were extended to reduce the cost of issuing REAL ID licenses. Originally, REAL ID would have required states to produce compliant IDs for all driver's licenses—including new applicants, those renewing their licenses, and those simply wanting to board a plane whose licenses would not expire until 2013. The DHS reduced this cost burden by including phase-in requirements that allow states to become compliant first with licenses of those under 50 years old by 2014 and then with those over 50 years old by 2017.¹² An internal DHS

8. Kephart, "Identity and Security," p. 9. See press release, "Francisco Javier Miranda-Espinosa Sentenced to Serve over 11 Years in Federal Prison for Aggravated Identity Theft and Conspiracy to Launder Monetary Instruments," U.S. Attorney's Office, District of Colorado, February 15, 2006, at http://www.usdoj.gov/usao/col/press_releases/archive/2006/February06/2_16_06.html (June 10, 2009), and press release, "Joint Task Forces Created In 10 Cities to Combat Document and Benefit Fraud," U.S. Department of Homeland Security, Immigration and Customs Enforcement, April 5, 2006, at http://www.dhs.gov/xnews/releases/press_release_0884.shtm (May 26, 2009).
9. Public Law, 2005 109–13, § 206.
10. Walt Williams, "State Lawmakers Challenge REAL ID Act," *The State Journal* (Charleston, W. Va.), January 24, 2008, at <http://www.statejournal.com/story.cfm?func=viewstory&storyid=33938> (May 22, 2009).
11. Eliot C. McLaughlin, "Federal ID Plan Raises Privacy Concerns," CNN, <http://www.cnn.com/2007/POLITICS/08/16/real.id/index.html> (May 22, 2009).
12. Anne Broache, "Homeland Security Proposes Delayed REAL ID Rollout," CNET News, January 11, 2008, at http://news.cnet.com/8301-10784_3-9848924-7.html (May 22, 2009).

economic impact assessment of the new phase-in deadlines concluded that implementing REAL ID would cost about \$8 per person.¹³ In addition, under the REAL ID grant program, about \$149 million in appropriated funds was distributed in 2008 to help states to implement REAL ID.¹⁴

In an effort to implement the one-driver-one-license program, DHS designated Mississippi as the "lead hub" state, with Florida and Wisconsin as two partner states, and appropriated \$17 million to help states begin meeting the information sharing and state-based database requirements of REAL ID.¹⁵ In addition, Kentucky was awarded \$3 million to prepare for the nationwide deployment of electronic birth record verification to support REAL ID identity verification, otherwise known as Electronic Verification of Vital Events (EVVE).¹⁶ To date, 13 states have digitized their birth records, and North Dakota, South Dakota, and Iowa have a verification network for checking driver's license applications.¹⁷

The Benefits of REAL ID

Given the ongoing debate, it is important to lay out what REAL ID actually is and is not. The basic premise of REAL ID is to set minimum standards for issuing driver's licenses and IDs.¹⁸ It does not limit states on how many IDs they can issue or to whom

they may issue them. Nor does the law bind states to its provisions. Rather, REAL ID simply makes clear that noncompliant driver's licenses and noncompliant state-issued ID cards cannot be used as identification for any federal purpose. In this way, REAL ID makes Americans safer and deals with several issues.

Making Americans Safer. REAL ID fulfills a key 9/11 Commission recommendation. The commission's recommendations have frequently received bipartisan support as important guidelines that should be implemented to help to prevent acts of terrorism against America.¹⁹ Congress has passed numerous bills to implement the 9/11 Commission's recommendations, including the Intelligence Reform and Terrorism Prevention Act of 2004²⁰ and Implementing the Recommendations of 9/11 Commission Act of 2007.²¹

The driver's license provisions of the REAL ID law are no different. The 9/11 Commission recommended requiring all states to meet minimum security standards for issuance of and identification for driver's licenses. Given that six hijackers had used fraudulently obtained Virginia IDs to board planes on the morning of 9/11, REAL ID went further by requiring REAL IDs (or secure equivalents) to board commercial aircraft or enter critical government facilities such as nuclear power plants.²²

13. At a January 2008 press conference, DHS Secretary Michael Chertoff stated: "What we're doing is we're taking the current cost estimate, which may—which is a pretty generous estimate, I might say—which is under \$4 billion for a period of 10 years nationwide. And if you were to extrapolate that over all the licenses, it would essentially, on a pro rata basis, come out to a cost of a little more than \$8 per license." Michael Chertoff, remarks at press conference, U.S. Department of Homeland Security, January 1, 2008, at http://www.dhs.gov/xnews/speeches/sp_1200320940276.shtm (May 26, 2009).

14. Janice Kephart, "Secretary Chertoff's Stocking Stuffer: States Get Infusion of Secure ID Monies," Center for Immigration Studies, December 19, 2008, at <http://cis.org/kephart/chertoffsstockingstuffer> (May 26, 2009).

15. *Ibid.*

16. National Association for Public Health Statistics and Information Systems, presentation at June 2007 Annual Meeting.

17. "EVVE is popular in reducing fraud in Social Security and Medicare and Medicaid checks already. For example, EVVE Pilot with SSA for August 2002 to December 2003 for Birth/Death Verifications/Certifications included participating Vital Records Offices in California, Colorado, Hawaii, Iowa, Minnesota, Mississippi, Missouri, Oklahoma and SSA Local Offices in 26 states had EVVE access." Rose Trasatti, "All About EVVE," presentation at ISM Conference, Boston, August 6, 2007, at http://www.aphsa-ism.org/Conference/Doc/2007%20ISM%20Conference%20Presentations/Session%201-3_Citizenship%20Verification_Trasatti.pdf (May 26, 2009).

18. James Jay Carafano, "DHS Gets REAL ID Right," Heritage Foundation WebMemo No. 1801, February 7, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1801.cfm>.

19. James Jay Carafano, "Making REAL ID a Reality—Concerns, Challenges, Choices, Solutions," testimony before the Committee on the Judiciary, U.S. Senate, May 8, 2007, at <http://www.heritage.org/Research/HomelandDefense/tst050807.cfm>.

20. Public Law 108-458.

21. Public Law 110-53.

Illegal Immigration. REAL ID permits states to issue driver's licenses and IDs to whomever they choose, but only those who can demonstrate that they are lawfully present in the United States may obtain REAL IDs. More specifically, REAL ID requires not only lawful presence, but also that the duration of the license or ID match the individual's legal length of stay in the U.S. In other words, once a person is no longer lawfully present in the United States, their driver's license should expire. This provision is necessary to prevent individuals who enter the U.S. legally and overstay their visas from using their driver's licenses or IDs to access federal areas with "official purposes." This will prevent individuals illegally in the U.S. from using false driver's licenses to obtain government services fraudulently.²³

Privacy. REAL ID requires those handling database information and producing IDs to undergo more rigorous background checks and screening than is currently required. Furthermore, facilities that create and store IDs are required to maintain a minimum level of physical security on their premises. This means that information is better protected, not less. Furthermore, REAL ID does not give information to the federal government, but instead ensures that states remain in charge of this information, in the same way that they did prior to REAL ID. In addition, states must submit certification plans and meet privacy standards to demonstrate that they comply with REAL ID standards.

Fraud and Identity Theft. Billions of dollars are lost each year in identity theft, fraudulently obtained government services, and other criminal activities. Standards that take security for granted simply make no sense in the 21st century. Efforts to implement the 9/11 Commission's recommendations on identity verification, lawful presence, and the digitization of documents, such as birth and

death records, have already substantially reduced fraud. Furthermore, those states that have not fully complied with REAL ID, such as Maryland, have felt the strain that driver's license fraud places on their state budgets.²⁴ Since the passage of REAL ID, nearly every state has begun checking Social Security numbers and lawful status. Twice as many states require lawful presence today than two years ago. Furthermore, REAL ID's one-driver-one-license rule enables states to prevent bad drivers from obtaining new licenses in other states and to stop criminals from evading the law by using multiple identities in one or more states.

Myths About REAL ID

Despite these benefits, REAL ID is subject to criticisms,²⁵ but these criticisms are based on widely perpetuated myths.

Myth #1: REAL ID invades privacy.

Fact: REAL ID protects privacy by ensuring that people are who they say they are.

The information contained on the machine-readable strip on the back of a REAL ID license is the same that most states require on the face of the license, such as a digital photo, name, permanent address, age, height, and weight. Thus, this information does not implicate privacy concerns. REAL ID licenses are not required to contain RFID (radio frequency identification) technology, biometric fingerprint information, or Social Security numbers, which could raise privacy concerns.

Myth #2: REAL ID will create a national ID card and a hackable, national database.

Fact: REAL ID does not collect personal data in a centralized federal database.²⁶

REAL ID calls for the states to operate and access secure databases that are queried by authorized par-

22. National Commission on Terrorist Attacks Upon the United States, "9/11 and Terrorist Travel," August 21, 2004, p. 43, at http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf (June 10, 2009).

23. "Texas Attorney General Halts Sale of Fake Driver's Licenses," *Government Technology*, April 11, 2008, at <http://www.govtech.com/gt/285914> (May 22, 2009). See also WBAL TV, "I-Team: Fake IDs Easy to Get for Immigrants," July 30, 2007, at <http://www.wbal.com/news/13784640/detail.html> (May 21, 2009).

24. Janice Kephart, "MD Faces Music on Drivers Licenses," Center for Immigration Studies, April 22, 2009, at <http://www.cis.org/Kephart/MDHouseBill387-REALID> (May 26, 2009).

25. See Center for Democracy and Technology, "REAL ID: What Should Congress Do Now?" February 1, 2008, at http://www.cdt.org/security/identity/20080201_REAL%20ID_hillbrief.pdf (May 26, 2009).

ties (such as MVAs and law enforcement). No databases are created to serve REAL ID. It only directs states to bring together pre-existing databases into a broader, secure network that will allow states to talk to one another and prevent fraud. Moreover, the federal government cannot and will not have access to any applicant's information. There is nothing "national" about the process. If anything, REAL ID can be said to obviate any need for a national ID.

Myth #3: REAL ID is a federal mandate that eliminates the right of states to issue driver's licenses and identification.

Fact: Each state can still issue many varieties of IDs, including IDs and driver's licenses that do not comply with REAL ID.

The driver's license is the most common form of ID used in the U.S. today. A driver's license is accepted for everything from opening a bank account to boarding a plane to picking up movie tickets purchased with a credit card. Securing this widely used credential makes sense on the state level, but not on the national level. Furthermore, the right to do this, even under REAL ID, still resides with the individual state. Each state can still issue many varieties of REAL ID-compliant cards and can continue to issue noncompliant IDs. The law remains completely voluntary, and states are not required to comply. Finally, REAL ID does not infringe on the right of states to decide who is eligible for a driver's license or ID.

PASS ID Act: The Wrong Strategy

PASS ID advocates portray the bill as a means of maintaining 9/11 Commission recommendations in a more flexible manner than offered by REAL ID. In reality, the PASS ID Act repeals outright substantive provisions of REAL ID, stripping away provisions

that are already making driver's license issuance more secure. In short, PASS ID would set the same standards for driver's licenses as was recommended by the Commission, but the standards will not ensure security.

The primary supporters of PASS ID have made their opposition to REAL ID clear and the PASS ID language demonstrates that their goal is to freeze standards as they are today instead of continuing to strengthen licensing under REAL ID. Specifically, PASS ID would:

- **Weaken identity verification.** Two areas are key: ensuring that people are who they say they are (identity verification) and digitization of birth records to safeguard driver's license issuance. PASS ID returns identity verification to identity validation, the pre-9/11 standard, in which the state could simply rubber-stamp documents, such as birth certificates, principal residency documents, electronic verification of Social Security numbers, and passports. This was the same process that five 9/11 hijackers used to secure fake documents (principal residence affidavits) in Virginia, which enabled them to obtain IDs in early August 2001. REAL ID combats this problem by adding passport verification and birth record digitization as additional layers of security.²⁷

Lawful presence checks are only effective if identity verification and document authentication (ensuring that documents used are valid and trustworthy) are sufficient. Absent sufficient verification, an applicant would only need to steal, borrow, or buy a legal immigrant's or U.S. citizen's identity, use it to validate submitted paperwork, and then undergo a lawful presence screening, which is largely ineffective without the identity verification step. In essence, these

26. James Jay Carafano, "Making REAL ID Real—Finally," Heritage Foundation *WebMemo* No. 1773, January 11, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1773.cfm>.

27. PASS ID does maintain the lawful presence checks of REAL ID, which is an important standard for driver's license security. Maryland recently began checking lawful presence, after finding that allowing illegal immigrants to obtain Maryland driver's licenses had made the state a magnet for fraud, crime, and bad drivers. Governor O'Malley, a co-chair of the National Governors Association's Homeland Security Committee, signed a bill to comply with REAL ID on May 8, 2009. Laura Smitherman, "O'Malley Signs Contentious New Laws," *The Baltimore Sun*, May 8, 2009, at <http://www.baltimoresun.com/news/local/politics/bal-md.bills08may08.07190848.story> (May 26, 2009). See also Andy Green, "O'Malley's Position on Real ID," *The Baltimore Sun*, March 31, 2009, http://weblogs.baltimoresun.com/news/local/politics/2009/03/omalley_position_on_real_id.html (May 26, 2009).

requirements would further enable identity theft, instead of combating it like the requirements of REAL ID.

- **Give states money without accountability or fiscal responsibility.** PASS ID gives grant money to states without any accountability or any requirement to comply with the PASS ID requirements. In fact, PASS ID would not apply if a state law preempts the legislation. The bill would push back the compliance deadline another four years until 2017 (currently states would be required to be in compliance for those younger than 50 by 2014). Finally, even though most states already exceed PASS ID standards, it would not require states to demonstrate progress toward achieving the standards in exchange for the federal grants, which translates into essentially free money for states to use at their discretion. At a cost to U.S. taxpayers, the act also requires the federal government to provide free access to states for lawful status databases checks, including checking Social Security number information.
- **Weaken airport security.** Given that at least six hijackers used state-issued IDs or driver's licenses at airport check-in counters on the morning of 9/11, REAL ID requires passengers to present a secure ID before boarding a commercial airplane. PASS ID eliminates this provision, allowing anyone to board a commercial aircraft, whether or not they have a secure ID.
- **Eliminate information sharing among states.** The 9/11 Commission also found that the 9/11 hijackers held multiple driver's licenses and IDs from multiple states, similar to bad drivers, drug runners, counterfeiters, and others trying to circumvent the law. While REAL ID grants have been given to the states to create an information-sharing system to ensure that applicants no longer hold driver's licenses from other states, PASS ID would end that program, replacing it with a demonstration project that would likely never produce a useable system.

What the U.S. Should Do Instead

Since 2005, opponents have made several attempts to chip away at REAL ID Act requirements, and PASS ID is the latest such effort. Given the progress that has been made on REAL ID, Congress should:

- **Keep REAL ID.** The REAL ID standards can be implemented in a manner that respects constitutionally guaranteed liberties and the principle of federalism, makes economic sense, better protects the individual liberties and privacies of U.S. persons, and contributes to national security and public safety.²⁸ Postponing or modifying implementation confuses the work already in process and detracts from the underlying purpose of REAL ID: enhancing security of both the individual and the nation.
- **Appropriate necessary funds to finish implementing REAL ID.** To date, states have been allocated \$129 million in grants. However, approximately \$50 million of the funds appropriated for fiscal year (FY) 2009 remain unspent.²⁹ Even though Congress doubled funding for FY 2009 to \$100 million, it is generally recognized that these sums will not cover the costs of implementing REAL ID. Rather than repeal REAL ID, Congress should support the states by appropriating sufficient funding and spending the remaining funds as originally intended.
- **Move interested states into the REAL ID system.** The supporters of the PASS ID Act have claimed that states are uninterested in REAL ID and that PASS ID represents a more palatable option. However, about 15 states have publicly supported REAL ID and are working toward achieving the first round of 18 material compliance benchmarks set by REAL ID regulations by the January 1, 2010, deadline.³⁰ Other states continue to make progress towards REAL ID goals. These benchmarks indicate progress toward REAL ID goals and include target goals, such as

28. James Jay Carafano, "Making REAL ID a Reality."

29. Kephart, "Secretary Chertoff's Stocking Stuffer."

30. Janice Kephart, "REAL ID Final Rules: A Summary," 9/11 Security Solutions, February 21, 2008, at <http://www.911securitysolutions.com/docs/REALIDFinalRules.pdf> (May 26, 2009).

mandatory facial image capture, requiring applicants to sign applications under penalty of perjury, ensuring physical security of the ID cards, ensuring the security of personally identifiable information, verifying Social Security numbers and lawful status with federal database queries, and conducting background checks on covered MVA employees. Alabama, Colorado, Delaware, Florida, Indiana, Iowa, Kentucky, Maryland, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Rhode Island, Texas, and Wisconsin should be deemed in material compliance as soon as practicable. Their successes will encourage other states to follow suit.³¹

- **Add flexibility to the state grant program.** Some states have chosen to increase the security of their IDs through enhanced driver's license (EDL) memorandums of agreement with the DHS.³² This program enables states to add additional information to driver's licenses to comply with the Western Hemisphere Travel Initiative (WHTI), which rolled out in full on June 1, 2009. WHTI requires a passport or "biometric equivalent" for any person, including U.S. citizens, to cross into the U.S. from Bermuda, the Caribbean, Mexico, or Canada. Several states have successfully implemented EDLs, including Washington, New York, Vermont, and Michigan (as of late April 2009).³³ Texas lawmakers have authorized the state government to begin issuing EDLs, but the

governor has held back the process.³⁴ The DHS should enable states that choose to implement an EDL program that complies with REAL ID standards to use REAL ID grants for EDLs in addition to REAL IDs, producing a dual benefit.

Secure IDs for a Safer America

When a state issues a driver's license or ID, both the state and the individual should be confident that the license is a secure, authenticated credential. The DHS issued final regulations for REAL ID in January 2008, based on thousands of comments from states and other interested parties. Many states have already made significant progress toward this end. States are working toward implementation, spending millions of dollars to improve their driver's license issuing systems.

Stopping those efforts now would simply waste money, confuse processes that took four years to put in place, and delay what most Americans want: secure IDs and a safer America.

—Janice L. Kephart is a former counsel to the September 11 Commission and is National Security Policy Director for the Center for Immigration Studies. Jena Baker McNeill is Policy Analyst for Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.

31. U.S. Department of Homeland Security, "Frequently Asked Questions: REAL ID," June 20, 2008, at <http://www.fpinternational.com/news/copy%20of%20real%20id%20grants%20faq.pdf> (May 29, 2009). See also American Financial Services Association, "The REAL ID Act: State Implementation & Effects," March 2009, p. 4, at <https://www.afsaonline.org/CMS/fileREPOSITORY/The%20REAL%20ID%20Act%20Final.pdf> (May 26, 2009). For details on individual states, see the Appendix.
32. U.S. Department of Homeland Security, "Fact Sheet: Enhanced Driver's Licenses (EDL)," December 5, 2007, at <http://www.aila.org/content/default.aspx?bc=101616715|12053126285|26297|23988> (May 26, 2009).
33. Patrick Michels, "Enhanced Drivers' License Eases Border Crossing for Washington State Residents," *Government Technology*, April 9, 2008, at <http://www.govtech.com/gu/279970?id=279970> (May 26, 2009); New York Department of Motor Vehicles, "Enhanced DMV Photo Documents for U.S. Citizens Who Are Residents of NYS," at <http://www.nysdmv.com/edl-main.htm> (May 26, 2009); Vermont Department of Motor Vehicles, "EDL FAQs," updated March 12, 2009, at <http://dmv.vermont.gov/documents/MiscellaneousDocuments/EDLFAQ.pdf> (May 26, 2009); and Sue Schroder, "Cross the Border with Michigan's Enhanced Driver's License," *MLive.com*, May 10, 2009, at http://www.mlive.com/travel/index.ssf/2009/05/it_wasnt_exactly_the_border.html (June 10, 2009).
34. Eliot Shapleigh, "Governor Perry Harms Border Security and Texas Businesses by Denying Enhanced Driver's License Program," January 31, 2008, at <http://shapleigh.org/news/1527-governor-perry-harms-border-security-and-texas-businesses-by-denying-enhanced-driver-s-license-program> (May 26, 2009).

APPENDIX STATE PARTICIPATION IN REAL ID

Alabama. Citizens take computerized tests. Their records are captured electronically, and their digital photos are stored in a searchable database. Their names are automatically checked against national databases to confirm their identities and to ensure that they are legally entitled to licenses.³⁵

Colorado.³⁶ Colorado remains a leader in identity theft prevention.

Delaware.³⁷ Delaware is examining ways in which the state can move forward with REAL ID implementation.

Florida. Florida received \$1.2 million to partner with Mississippi, the lead hub state for pilot implementation and verification testing.³⁸

Indiana. Indiana received \$1.2 million to partner with the lead hub state for pilot implementation and verification testing. "BMV Commissioner Ron Stiver said the new licenses will result in a total cost savings of \$2.5 million during the six-year contract period."³⁹

Iowa.⁴⁰ Iowa is planning to comply with REAL ID and is actively taking steps toward this goal.

Kentucky. "FEMA awarded Kentucky an additional \$4 million to help state Department of Motor Vehicle Departments connect to state Vital Records Offices (VRO). The Commonwealth of Kentucky will enable state VROs to access the Electronic Verification of Vital Events hub (a web based portal) to verify birth and death record information of individuals applying for REAL ID driver's licenses and identification cards. Kentucky will also use these funds to expand the scope of its REAL ID Pilot Project by comparing U.S. foreign born citizens applying for a REAL ID driver's license with the U.S. Department of State's foreign born citizen birth record information."⁴¹

Maine. On June 3, 2009, Maine Governor John Baldacci vetoed a bill that would have stopped Maine from complying with REAL ID. He cited the fact that "Maine had become a target for unscrupulous individuals looking to circumvent legal presence requirements in other states," as one of the reasons behind the veto.

Maryland. Governor Martin O'Malley signed a bill to comply with REAL ID on May 8, 2009.

35. Alabama Department of Public Safety, "States Special Report on States Special Compliance with PL 109-13, the REAL ID Law," July 2008.

36. Colorado Motor Vehicle Division ITAA IdentEvent, "One State's Journey to REAL ID: The Impetus for Change," PowerPoint presentation, October 17, 2007, at <http://www.itaa.org/upload/es/events/ident07/presentations/vccchi.pps> (May 26, 2009).

37. Jennifer Cohan, "Federal Real ID Act Delaware Implementation Proposal," PowerPoint file, Delaware Division of Motor Vehicles, July 25, 2008, at <http://www.aamva.org/aamva/DocumentDisplay.aspx?id=%7BDB0BD626-AD21-44CA-9023-5B2F19D058CB%7D> (May 26, 2009).

38. Florida Department of Highway Safety and Motor Vehicles, "Real ID Act—Frequently Asked Questions," at <http://www.flhsmv.gov/realid> (May 26, 2009).

39. Gina M. Scott, "Indiana Launches More Secure Drivers License," *Digital Communities*, June 6, 2007, at <http://www.govtech.com/dc/articles/124057> (May 26, 2009).

40. Iowa Department of Transportation, "Real ID: Questions and Answers" February 20, 2008, at <http://www.iowadot.gov/Mvd/ods/realid.pdf> (May 26, 2009).

41. U.S. Department of Homeland Security, "Frequently Asked Questions: REAL ID."

Mississippi. Mississippi received \$17 million to become the lead state for verification hub requirements and development.

Nevada. Nevada received \$1.2 million to partner with the lead hub state for pilot implementation and verification testing. "Nevada citizens will have the option of obtaining a Real ID compliant driver's license or identification card, or a standard Nevada driver's license as issued today."⁴²

Ohio. Ohio was the first state to request and receive an extension. "Ohio has no plans to oppose Real ID. At this time, we are going to have to review the final rules to make a determination, but we have been moving full steam ahead with the intent of implementing Real ID in Ohio."⁴³

Oregon. In 2007, Oregon Governor Ted Kulongoski issued an Executive Order which called for stricter driver's license and identification card issuance standards.⁴⁴

Rhode Island. "Governor Carcieri has indicated that he supports REAL ID implementation in Rhode Island."⁴⁵

Wisconsin. Wisconsin received \$1.2 million to partner with the lead hub state for pilot implementation and verification testing. "Under the 2007–2008 biennial budget provisions Wisconsin [will be] in full compliance with the federal Real ID law."⁴⁶

42. Nevada Department of Motor Vehicles, "The Real ID Act in Nevada," at <http://www.dmvnv.com/realid> (May 26, 2009).

See also Tim Doulin, "Rules for Driver's Licenses Tightened," *The Columbus Dispatch*, January 12, 2008, at http://www.dispatch.com/live/content/local_news/stories/2008/01/12/Secure_License.ART_ART_01-12-08_A1_4191M6L.html (May 26, 2009).

43. Tim Doulin, "Rules for driver's licenses tightened: Ohio plans to start stricter screening in 2010 to meet federal Real ID standards," *The Columbus Dispatch*, January 12, 2008, at http://www.dispatch.com/live/content/local_news/stories/2008/01/12/Secure_License.ART_ART_01-12-08_A1_4191M6L.html (June 19, 2009).

44. Office of the Governor of the State of Oregon, "Standards for Issuance of Oregon Drivers Licenses and Identification Cards," Executive Order No. 07-22, at <http://governor.oregon.gov/Gov/pdf/eo0722.pdf> (June 11, 2009).

45. Rhode Island Division of Motor Vehicles, "Preparing for REAL ID," at <http://www.dmv.ri.gov> (May 26, 2009).

46. Wisconsin Legislative Reference Bureau, "REAL ID," Brief 08–3, March 2008, at <http://www.legis.state.wi.us/lrb/pubs/wb/08wb3.pdf> (May 29, 2009).

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TESTIMONY OF
DR. NELSON LUDLOW
DIRECTOR AND CHIEF EXECUTIVE OFFICER
INTELLICHECK MOBILISA, INC.
SUBMITTED TO THE UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS
JULY 15, 2009

Introduction

Good morning Chairman Lieberman, Ranking Member Collins, and members of the Committee. I am Dr. Nelson Ludlow, Director and Chief Executive Officer of Intellicheck Mobilisa, Inc. I am pleased to submit this testimony on S. 1261 Providing for Additional Security in States' Identification Act of 2009 (PASS ID Act) to the Senate Committee on Homeland Security and Governmental Affairs.

Intellicheck Mobilisa, Inc.

Intellicheck-Mobilisa Inc. (NYSE Amex:IDN) is a Historically Underutilized Business (HUB) Zone, veteran-owned, publicly traded, small business headquartered in Port Townsend, Washington with offices in Alexandria, Virginia and Woodbury, New York. In addition to our major office locations, we have employees in California, Georgia, New Hampshire and Ohio.

Intellicheck Mobilisa is a leader in the ID verification business, both for government entities and in the commercial sector. We have 3 main business units, (1) Government Identity Systems, (2) Commercial Identity Systems and (3) Wireless Programs. Both Identity Units focus on the processing of the information contained in the machine readable zone of drivers licenses.

Intellicheck Mobilisa currently owns 9 patents and has 10 patents-pending in the area of scanning machine readable zones on driver's licenses, military ID cards, Transportation Worker Identity Cards and other valid forms of identification cards. Intellicheck Mobilisa products include the Defense ID system, an advanced ID card access control product that is currently protecting over 70 military and federal locations and ID-CHECK, a technology that instantly reads, analyzes, and verifies encoded data in magnetic stripes and barcodes on government-issue IDs from approximately 60 jurisdictions in the U.S. and Canada to determine if the content and format are valid.

Our ID technologies help:

- *Combat Commercial Fraud* – which may lead to economic losses to merchants from check cashing, debit and credit card as well as other types of fraud, such as identity theft that principally uses fraudulent identification cards as proof of identity;
- *Facilitate Instant Credit Card Approval* – retail stores use Intellicheck Mobilisa technology to scan a driver's license at a kiosk or at the point of sale (POS) and send the information to a credit card underwriter to get instant approval for a private labeled credit card. This technique protects consumer data and is significantly more likely to result in a completed transaction compared to in-store personnel asking customers to fill out a paper form with the same information;
- *Prevent Unauthorized Access* – our systems and software are designed to increase security and deter terrorism at airports, shipping ports, rail and bus terminals, military installations, high profile buildings and infrastructure where security is a concern;
- *Deter Underage Access to Age Restricted Products and Services* – our systems and software are designed to determine the customer's age as well as the validity of the encoded format on identification documents, to detect and prevent the use of fraudulent identification for the purchase of alcohol, tobacco and other age restricted products and services and to reduce the risk to the retailer of substantial monetary fines, criminal penalties and the potential for license revocation for the sale of age-restricted products to under-age purchasers;
- *Avoid Inefficiencies Associated With Manual Data Entry* – by reading encoded data contained in the bar code and magnetic stripe of an identification card, customers are capable of accurately and instantaneously inputting information into forms and applications without the errors associated with manual data entry;

Government ID Systems

Defense ID is the flagship product in protecting military bases and other secure facilities across the United States. Currently at use in over 70 federal installations including high visibility facilities such as Andrews Air Force Base (home to Air Force One), Defense ID has stopped over 60,000 suspect individuals from gaining access to these secure areas.

Defense ID is a mobile, hand-held device usually used by entry control point personnel that scans the machine readable code on military ID cards and driver's licenses to compare the data to over 100 "bad guy" lists, including the FBI Most Wanted Fugitives, America's Most Wanted, and Interpol.

After a terrorist plot was discovered and prevented at Fort Dix, New Jersey, the US military chose Defense ID as the system of choice to aid the security personnel in protecting that base.

Defense ID is also used during large events open to the public. During an air show event in Maryland over 50,000 pieces of ID were scanned and 71 stops were made.

Commercial ID Systems

ID Check is used commercially in pharmacies, retail stores, hotels and banks.

Pharmacies scan driver's licenses to verify identity on a prescription and inventory controlled over-the-counter drug (e.g. Pseudoephedrine) purchases as required by current law.

Currently used in 200 plus banks, the ID Check System is used to check the identity of an individual applying for an account. By scanning an applicant's driver's license, the data is input directly into the computer eliminating the need to photo copy the license. This helps eliminate data entry errors and reduces the chance of identity theft on new accounts.

Retail giants Target, LL Bean, Toys R Us, Payless Shoes, and many more have implemented the ID System to allow customers the option of applying for a private labeled credit card when checking out at the cash register. Using the same barcode scanner that reads the prices on merchandise, the register operator can also scan the customer's driver's license to automatically fill out the electronic application form. This process again helps eliminate data entry errors and reduces the chance of identity theft on new accounts. These retailers also use the driver's licenses to prevent fraudulent returns.

Intellicheck Mobilisa also has a system that is in use in the hotel and car rental industries to aid in the check-in process in order to verify identity and reduce the registration time for hotel and car rentals. Nearly 60% of people entering a hotel for the evening do not have a reservation. Using a kiosk to scan their driver's license, the customers can fill out the entire hotel application form in just a few seconds as opposed to standing at the front desk and waiting for the clerk to type in all of the required information.

AAMVA Test Lab and Courtesy Verification Program

Intellicheck Mobilisa was appointed by the American Association of Motor Vehicle Administrators (AAMVA) as the official testing laboratory for AAMVANet, Inc., the technical arm of AAMVA and has provided conformity assessment testing services for AAMVA since November 1999. The AAMVA establishes guidelines for driver's licenses and non-driver identification cards that contain encoded information on magnetic stripes and barcodes.

Intellicheck Mobilisa also supports AAMVA with providing their members with a Courtesy Verification Program (CVP). CVP is a free service provided to AAMVA members and is an effective way for AAMVA members to determine if their driver's licenses and identification (DL/ID) cards and other motor vehicle administration documents using machine readable technologies conform to the applicable AAMVA standards and specifications.

Even though AAMVA has published best practices, standards, and specifications covering DL/ID cards and the bar codes for other documents for years, inconsistencies in the implementation of those guidelines continue to occur. These inconsistencies adversely impact the interoperability that is the main goal of the AAMVA standards and specifications. A primary objective of the CVP is improving the consistency of implementation across all jurisdictions choosing to follow the AAMVA standard and specifications. Information gained from the testing of jurisdictions DL/ID cards and other documents is not only used by jurisdictions to improve their issuance systems but also is used by AAMVA to make improvements to the standards and specifications it publishes.

Current Challenges with Verifying Identification Documents

The high-tech revolution has created a major problem for those who rely on identification documents. In an age where scanners, computers and color printers are commonplace, fake IDs of the highest quality are easily obtainable from a number of locations including college campuses and from multiple sites on the Internet. These fakes appear so real, even law enforcement agencies have encountered difficulty distinguishing them from legally issued documents. Additionally, these high-tech devices have the ability to easily alter properly issued ID's. Therefore, anyone can gain access to a false identity that gives them the ability, in a commercial transaction, to present fake and stolen credit cards or checks that are supported by false identification. Additionally, starting with only a fraudulent driver's license, an individual may be able to create multiple identities, commit fraud, purchase age restricted products such as alcohol and tobacco while underage, evade law enforcement and engage in other criminal activities, such as:

- committing identity theft;
- improperly boarding airplanes;
- committing credit card, debit card and check cashing fraud;
- unlawfully committing pharmacy fraud, including false narcotic prescriptions;
- gaining entrance to high profile buildings, military installations and sensitive infrastructures, such as nuclear facilities;
- illegally purchasing firearms;
- committing employee fraud, including employee theft and payroll theft;
- engaging in medical fraud;
- obtaining welfare or other government benefits; and
- committing refund fraud.

In addition to these concerns, nearly 1 in 300 key strokes contain an error, which equates to nearly 1 in 2 applications for new accounts, credit cards, loyalty information, health care, hotel check in, hospitals, et cetera containing errors. Individuals are also 12 times more likely to feel comfortable and complete a new account application by scanning an ID card than writing their personal information on an application form.

Given the ease with which identification can be falsified, simply looking at a driver's license may not be sufficient to verify age or identity and determine whether or not it is fraudulent. This is at the center of what Intellicheck Mobilisa does – since merchants are facing significant economic losses due to these frauds, a document verification system that can accurately read the electronically stored information is needed. Intellicheck Mobilisa technology provides an analysis of the data contained on the encoded formats of these identification documents by reading and analyzing the encoded format on the magnetic stripe or bar code on the driver's license and comparing it against known standards. Intellicheck Mobilisa is the leader in this capability and the only company capable of doing this for all national jurisdictions.

S. 1261 the "Providing for Additional Security in States' Identification Act of 2009" (PASS ID Act)

While Intellicheck Mobilisa overall supports this legislation, Section 4 of the bill appears to prevent scanning of the Machine Readable Zone (MRZ) of a driver's license or identity card by a private entity:

SEC. 4. USE OF DRIVER'S LICENSE OR IDENTIFICATION CARD DATA BY PRIVATE ENTITIES.

Chapter 123 of title 18, United States Code is amended—

(1) in section 2722, by adding at the end the following:

(c) Copying Information From Drivers Licenses or Identification Cards.—It shall be unlawful for any person, knowingly and without lawful authority—

"(1) to scan the information contained in the machine readable component of a driver's license or identification card; or

"(2)(A) to resell, share or trade that information with any other third parties;

"(B) track the use of a driver's license or identification card; or

"(C) store the information collected.";

As it is currently drafted, this section would prohibit retail stores, banks, hotels and car rental agencies from using Intellicheck Mobilisa technology to scan the MRZ of driver's licenses and identification cards for the purposes of issuing credit cards, opening bank accounts, checking in to hotels, renting cars, and for a host of other applications where technology has safely and securely facilitated the legitimate commercial interaction between citizens and businesses while protecting individuals' privacy and identity security concerns.

While we understand the intent of the drafters is to protect the privacy of the individual and to prevent the information from being collected and sold to third parties for the purpose marketing future products and services, there are a number of legitimate business transactions that do utilize this technology to improve accuracy of data input, prevent fraud and identity theft, and reduce transaction times. The way the language is currently drafted, it singles out and prohibits a specific technology and activity that has been conducted and accepted for more than 10 years. This language prohibits the scanning of the reverse side of the identification card or driver's license, but does not prohibit the use of optical character recognition technology (OCR) that could be used to scan the face of the card and, in effect, automatically capture all of the same information that is embedded in the MRZ. The language will have the effect of causing retailers to revert to the outdated method of having individuals fill out forms by hand and cashiers/hotel clerks/car rental agents/bank tellers populating fields in computerized data forms from those handwritten forms. This poses an additional identity theft risk as an individual's information is now floating around on a piece of paper waiting to be filed or transmitted to the bank issuing the credit card.

The MRZ is often considered the more secure location for information as the information can be encrypted. For the majority of states (37 out of 50), the information encoded in the MRZ is either the same or less than that on the face of the driver's license. The most common "encoded but not printed" information is hair color and/or weight (6/13). Only two states specify race on a driver's license, and only one has it in the MRZ.

There are a handful of states that previously issued driver's licenses with social security number (SSN) information. In 2004, the Intelligence Reform Act prohibited the printing and encoding of the SSN on driver's licenses/identification cards issued 1 year after enactment of the act (2005). Since this time, states that had been using the SSN on the document made efforts to have it removed. Most of these licenses have now been replaced by license renewals. Only Maine and West Virginia encode SSNs and that information is encrypted in the MRZ on both of those licenses. While most states put an end to the use of the SSN before or immediately after the passing of the act, a few states went as far as the year 2008 before they removed the SSN. This would mean that there may be some documents in circulation as far as 2016 that would contain the SSN. However, there is no state that encoded an unencrypted SSN in the MRZ without it also being printed on the front of the driver's license.

For SSN and race, Intellicheck Mobilisa software filters out that information, blocking it from being transmitted to retailers and banks. The credit card application process requires the customer to manually enter their SSN on a separate numeric key pad for all states driver's licenses, even if an older version of a driver's license contained the SSN.

Intellicheck Mobilisa does not, nor has it ever, collected data from the millions of MRZs scanned for commercial purposes each week. We support the prohibition to use the information parsed from the MRZ for any purpose other than the intended use when the owner of the license provides the license to be scanned. We do not, nor have we ever, sold or stored data for use by some third party not involved in the original interaction for which the document was read.

Recommendations

Intellicheck Mobilisa recommends changing the language in Section 4 to address the key privacy concern regarding the use of sensitive personal information on driver's licenses and identification cards by prohibiting placing that information on the card itself. Rather than single out and prohibit a single technology we recommend addressing the privacy issue as recommended above, which makes Section 4 no longer necessary or, in the least, amending Section 4 to more clearly address the privacy concern of unknowing use and collection of driver's license information. The section can also be amended to

specifically prevent the misuse of information when that information is presented for age-verification purposes. We welcome the opportunity to help the committee unambiguously address these important privacy concerns while simultaneously preserving the ability for consumers and businesses to engage in safe, secure and mutually beneficial transactions as they have for more than a decade using our technology.

Summary

In conclusion, there are a number of legitimate business transactions that utilize technology to scan the Machine Readable Zone (MRZ) of driver's licenses to improve accuracy of data input, prevent against fraud and identity theft and reduce transaction times when applying for a credit card, renting a car, checking in to a hotel or opening a new bank account. This technology should not be banned in favor of technology to scan the front of the card via Optical Character Recognition (OCR) or reverting to the outdated method of having individuals fill out forms by hand.

We appreciate the opportunity to provide this information to the Committee. Intellicheck Mobilisa is prepared to assist you in your efforts in any way we can and I would be happy to answer any questions you might have for me.



NATIONAL ASSOCIATION FOR PUBLIC HEALTH STATISTICS AND INFORMATION SYSTEMS

962 Wayne Avenue, Suite 701
Silver Spring, MD 20910
(301) 563 6001
Fax: (301) 563 6012

**REEVALUATING REAL ID:
STRENGTHENING BIRTH CERTIFICATE VERIFICATION**

Statement for the Public Record

of

**National Association for Public Health Statistics and Information
Systems**

to the

Committee on Homeland Security and Governmental Affairs

United States Senate

July 15, 2009

Statement for the Public Record

The National Association for Public Health Statistics and Information Systems (NAPHSIS) welcomes the opportunity to provide this written statement for the public record as the Committee reevaluates the REAL ID Act. NAPHSIS represents the 57 vital records jurisdictions that collect, process, and issue birth and death records in the United States and its territories, including the 50 states, New York City, District of Columbia and the five territories. NAPHSIS coordinates the activities of the vital records jurisdictions among the jurisdictions and with federal agencies by developing standards, promoting consistent policies, working with federal partners, and providing technical assistance to the jurisdictions.

The Birth of Verification

Prior to the terrorist attacks on the United States on September 11, 2001, all but one of the terrorist hijackers acquired some form of identification document, some by fraud, and used these forms of identification to assist them in boarding commercial flights, renting cars, and other necessary activities leading up to the attacks. In its final report, The 9/11 Commission recommended implementing more secure sources of identification, stating that “federal government should set standards for the issuance of birth certificates and sources of identification, such as driver’s licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.”¹

Heeding the recommendations of the 9/11 Commission, Congress enacted the REAL ID ACT in May 2005. Among other provisions, the REAL ID Act and its corresponding regulations (6 CFR Part 37) require that applicants for a driver’s license present their birth certificate to the motor vehicle agency to validate their U.S. citizenship and their date of birth, and that birth certificates must be verified by the state. Sec. 37.13 of the identification standards regulations recommends that states through their departments of motor vehicles (DMV) should use the Electronic Verification of Vital Events (EVVE) system, operated by NAPHSIS, to verify birth certificates presented by applicants.

EVVE is an online system that verifies birth certificate information. It provides authorized users at participating agencies with a single interface to quickly, reliably, and securely validate birth and death information at any jurisdiction in the country. In so doing, *no personal information is divulged* to the person verifying information—EVVE simply relays a message that there was or was not a match with the birth and death records maintained by the state, city, or territory.

¹ The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks upon the United States, July 2004, p. 390.

NAPHSIS
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Birth Verification Needed Now More Than Ever

Many federal and state agencies rely on birth certificates for proof of age, proof of citizenship, identification for employment purposes, to issue benefits or other documents (e.g. driver's licenses, Social Security cards, and passports) and to assist in determining eligibility for public programs or benefits (e.g., Medicaid). Nevertheless, individuals have obtained birth certificates of deceased persons and assumed their identity, created fraudulent birth certificates, and altered the information on a birth certificate, as documented in a Department of Health and Human Services Office of Inspector General Report of 2000.²

Most recently, the GAO documented several cases in which investigators created fraudulent birth certificates and were able to obtain passports based upon the fraudulent records because the passport office did not verify the birth certificate information.³ As a result, the Passport Fraud Prevention Managers commenced using the EVVE system in March 2009 for birth verifications. In their first six weeks of use, there were two instances where the Fraud Prevention Managers used the EVVE system to electronically verify the birth certificates, and EVVE returned a 'no match.' Upon further follow up with the vital records offices that 'issued' the birth certificates it was determined that indeed the birth certificates presented with those passport applications were fraudulent.

EVVE's Benefits Hindered Only by Resource Constraints

EVVE is currently used by the state DMVs and Medicaid Offices, the Social Security Administration, the Office of Personnel Management, and the Department of State Fraud Prevention Managers in select jurisdictions (see Table 1). Users of EVVE are enthusiastic about the system, citing its capacity for:

- Providing protection against the potential use of birth certificates for fraudulent activities.
- Improving customer service by facilitating rapid access to accurate and verifiable vital record data in real-time.
- Safeguarding the confidentiality of birth and death data.
- Offering a secure mechanism for communication between agencies and vital records offices via the Internet.
- Easily integrating with current legacy systems that the federal or state agencies may already be using, and for serving as a user-friendly interface for agencies that seek a stand-alone query system.

NAPHSIS is working on further upgrades to the EVVE system to meet the REAL ID requirements and to ensure that EVVE is installed in all 57 jurisdictions by May 2011. NAPHSIS is also in the process of procuring a data analysis and quality control tool that

² Department of Health and Human Services, Office of Inspector General, *Birth Certificate Fraud*, Sept. 2009 (OEI-07-99-00570).

³ Government Accountability Office, *Department of State: Undercover Tests Reveal Significant Vulnerabilities in State's Passport Issuance Process*, Mar. 2009 (GAO-09-447).

all jurisdictions can utilize to analyze their EVVE databases for anomalies, inconsistencies, accuracy, and completeness.

Nevertheless, EVVE faces resource-related challenges that may impact our ability to harness EVVE's full potential:

- Most vital records jurisdictions have electronic birth records that extend back for several decades, and the utilization of the EVVE system has proven that these databases can be used effectively. However, only 85 percent of birth records dating back to 1935 are available in electronic form. To recognize EVVE's full potential to protect our nation, 100 percent of birth certificates in 100 percent of jurisdictions should be in electronic form. In addition, some data should be re-keyed to improve quality. Currently, among the vital records jurisdictions participating in the American Association of Motor Vehicle Administrators (AAMVA) birth verification pilot, those jurisdictions that have not cleaned up their files are experiencing only a 90 percent match rate. With clean data files, the match rates would exceed 95 percent.
- There are cases where an individual has assumed a false identity by obtaining a birth certificate of a person who has died. Therefore, it is important that resources be provided so that all death records are electronically linked to birth records. Most jurisdictions have linked infant deaths, and in many cases linked deaths to persons under 45 years of age. In the cases where birth and death records are linked, EVVE will return a "deceased" indicator to the requesting agency, which will confirm that the documentation presented is fraudulent.
- NAPHSIS collects fees from EVVE users to cover costs related to the system's operation, such as technical support and maintenance, system and business operation support, and vital records jurisdiction fees to support EVVE query access to birth data. DMV offices have expressed concerns about paying the costs associated with EVVE. Providing federal funding to DMVs to cover these costs would increase EVVE usage and help prevent the fraudulent use of birth information in acquiring driver's licenses and identification cards.

Investment in Birth Verification Required to Maximize Safety

As you reevaluate the REAL ID Act and consider legislation to strengthen it, NAPHSIS recommends that you preserve the authority established in REAL ID that requires driver's license applicants to present a birth certificate to document their birth in the United States and their date of birth. We also urge that states continue to be required to verify the birth certificates presented by these applicants, and that they use EVVE to do so.

To facilitate the implementation of EVVE throughout the United States and to harness its full potential to safeguard the American people, we respectfully request that any new legislation authorize an annual appropriation of \$15 million to underwrite the state DMV fees associated with verifying birth data. In addition, we request that you authorize an appropriation of \$102.5 million over a two-year period for vital records jurisdictions to

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July 15, 2009
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digitize their birth data back to 1935, to clean these data to support electronic queries, and link birth and death records. NAPHSIS feels strongly that this is a small price to pay to help DMVs verify birth data on the 245 million driver's licenses issued annually and to ultimately keep our country safe and secure.

As Congress seeks to improve the REAL ID Act, it is important to consider the legislation's intent: to preserve the safety of the American people. The 9/11 terrorists' ability to obtain valid government issued IDs, and more recently, the GAO's ability to obtain passports using fraudulent birth certificate data, reinforces the merits and importance of the REAL ID Act's birth verification provisions. NAPHSIS urges that the Committee "do no harm" in reevaluating the REAL ID Act and ensure these provisions are preserved and strengthened in any new legislation. Indeed, Congress should use the REAL ID Act as a foundation on which to build a secure birth verification system.

NAPHSIS appreciates the opportunity to submit this statement for the record and looks forward to working with the Committee as it reevaluates the REAL ID Act and seeks to strengthen its provisions. If you have questions about this statement, please do not hesitate to contact NAPHSIS Executive Director, Garland Land, at gland@naphsis.org or (301) 563-6001. You may also contact our Washington representative, Emily Holubowich, at eholubowich@dc-crd.com or (202) 484-1100.

Table 1: EVVE Users as of June 30, 2009

Vital Records Jurisdictions ^a		Federal	State
Alabama	Arkansas	Department of State, Fraud Prevention Managers	Iowa DMV
Connecticut	Hawaii		Minnesota Medicaid Office
Iowa	Kansas	Office of Personnel Management	Mississippi Medicaid Office
Kentucky	Minnesota		Mississippi District Health Offices
Mississippi	Missouri		North Dakota DMV
Montana	North Dakota	Social Security Administration	South Dakota DMV
Oklahoma	South Dakota		South Dakota Medicaid Office
Utah			Washington Medicaid Office

^a NAPHSIS expects to expand EVVE online usage to the eight additional vital records jurisdictions before the end of calendar year 2009, including: California; Massachusetts; Michigan; New Jersey; New York City; Ohio; Oregon; and Pennsylvania.

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July 15, 2009
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93RD DISTRICT
STATE CAPITOL
P.O. BOX 30014
LANSING, MI 48909-7514
PHONE: (517) 373-1778
FAX: (517) 373-5780
E-MAIL: paulopsommer@house.mi.gov

MICHIGAN HOUSE OF REPRESENTATIVES

PAUL E. OPSOMMER

STATE REPRESENTATIVE

July 14, 2009

The Senate Committee on Homeland Security and Governmental Affairs
The Honorable Joe Lieberman, Chairman
340 Dirksen Senate Office Building
Washington, DC 20510
(202) 228-3792 Fax

RE: written testimony for 7/15/09 hearing

Dear Chairman Lieberman, Ranking Member Collins, and Honorable Committee Members:

Thank you for receiving my written testimony for the July 15th hearing, "Identification Security: Reevaluating the REAL ID Act".

As Minority Chair for the Transportation Committee of a border state, I have had to deal first hand with many issues related to REAL ID, WHTI, Enhanced Driver's Licenses (EDLs), passports, and other identity documents. While the many problems associated with Title II are well known, I wanted to offer my personal perspective on how any alternatives need to be evaluated.

REAL ID, like EDLs and now potentially PASS ID, are at their core not about any one set of proposed or initial rules, but are about who is in charge of making additional rules in the future. While much attention has focused on what these laws would initially require, far too little time has been spent examining how they could be altered going forward. As an example, the "final" rules for REAL ID were really not final rules. In fact, in the "final" rules DHS mentioned several times that they could change technological standards later by merely consulting with the states and holding public comments. Subsequent conversations with DHS made clear that they could also change biometric standards, data sharing criteria, or the list of recognized federal purposes at any time in the future *without* needing a new law or going back to Congress.

That is unacceptable, regardless what the initial rules may be or who is paying for the program. In short, REAL ID was not a finite rule making process, but rather a blank check that permanently put DHS, or their agent AAMVA (through the Drivers License Agreement), in total ongoing control. While this is not desirable for a State's sovereign documents regardless of their relationship with DHS, it is compounded by my first hand experience with DHS over EDLs that has been almost universally negative. Recent communication has improved, but DHS is still not flexible in regards to standards and regulations that are often ill-advised and even counter to Congressional intent. Getting reliable data, even through FOIA, has been difficult.

If PASS ID shares this same characteristic, and permanently puts DHS, AAMVA, or other designees in charge of evolving standards in the future, all it serves to do is to limit the initial changes to make the law more palatable until such time it can be changed in the future.

I would appreciate your willingness to discuss this issue with DHS at the hearing, and to also take steps to first truly abolish Title II of the REAL ID Act so that any alternative can be put together in a fresh manner that changes both the role of DHS and the finiteness of any rule making process. Trying to "fix" REAL ID while leaving its core intact will ultimately leave us with many of the same issues and concerns, regardless of who pays for it.

Thank you for your kind consideration,

Respectfully in service,



State Representative
93rd District

